INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

CASE CONCERNING SOVEREIGNTY OVER PULAU LIGITAN AND PULAU SIPADAN

(INDONESIA/MALAYSIA)

VOLUME VI

Counter-Memorial of Indonesia

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE RELATIVE À LA SOUVERAINETÉ SUR PULAU LIGITAN ET PULAU SIPADAN

(INDONÉSIE/MALAISIE)

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This case, entered on the Court's General List on 2 November 1998 under number 102, was the subject of Judgments delivered on 23 October 2001 (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2001*, p. 575) and 17 December 2002 (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 625).

The documents relating to the case are being published in the following order:

Volume I. Special Agreement; Memorial of Indonesia.
Volume II. Memorial of Indonesia *(continuation)*.
Volume III. Memorial of Indonesia (Affidavits and Maps).
Volume IV. Memorial of Malaysia.
Volume V. Memorial of Malaysia (Maps).
Volume VI. Counter-Memorial of Indonesia.
Volume VII. Counter-Memorial of Malaysia; Reply of Indonesia.
Volume VIII. Reply of Malaysia; Application for Permission to Intervene by the Philippines; Written Observations of Indonesia and Malaysia; Verbatim Records of the Hearings.
Volume IX. Verbatim Records of the Hearings *(continuation)*.

*

For the purposes of this edition, the Court has decided that the written pleadings will be reproduced *in full*; it will therefore also include the documents annexed to those pleadings, which are not made available on the Court's website. The reproduction of all the annexed documents in this edition will enable practitioners to appreciate better the full scope of the arguments developed by the Parties in their written pleadings. As usual, the verbatim records of the public hearings appear after the pleadings; these verbatim records are published here in their final corrected versions, providing a useful supplement to the provisional versions made available on the Court's website.

Since the Court wishes to publish these documents as quickly as possible, it has been decided, where technically feasible, to reproduce the pleadings in the form in which they were submitted by the Parties.

Some documents in this edition have thus been scanned, and there are consequently two types of page numbering for the items included in these volumes: in addition to the normal continuous pagination, the original page numbers of the scanned documents are provided in brackets for reference purposes.

The Hague, 2010.

La présente affaire, inscrite au rôle général de la Cour sous le numéro 102 le 2 novembre 1998, a fait l'objet d'arrêts rendus le 23 octobre 2001 (*Souveraineté sur Pulau Ligitan et Pulau Sipadan (Indonésie/Malaisie), requête à fin d'intervention, arrêt, C.I.J. Recueil 2001*, p. 575) et le 17 décembre 2002 (*Souveraineté sur Pulau Ligitan et Pulau Sipadan (Indonésie/Malaisie), arrêt, C.I.J. Recueil 2002*, p. 625).

Les documents relatifs à cette affaire sont publiés dans l'ordre suivant:

Volume I. Compromis; mémoire de l'Indonésie.
Volume II. Mémoire de l'Indonésie *(suite)*.
Volume III. Mémoire de l'Indonésie (déclarations sous serment et cartes).
Volume IV. Mémoire de la Malaisie.
Volume V. Mémoire de la Malaisie (cartes).
Volume VI. Contre-mémoire de l'Indonésie.
Volume VII. Contre-mémoire de la Malaisie; réplique de l'Indonésie.
Volume VIII. Réplique de la Malaisie; requête à fin d'intervention des Philippines; observations écrites de l'Indonésie et de la Malaisie; comptes rendus d'audience.
Volume IX. Comptes rendus d'audience *(suite)*.

*

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Ainsi, certaines pièces de la présente édition ont été scannées et, de ce fait, les titres courants du présent ouvrage comportent deux genres de folios: outre la pagination continue habituelle, on trouvera, entre crochets, la pagination d'origine des pièces scannées, à laquelle il faudra se reporter en cas de renvoi.

La Haye, 2010.

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COUNTER-MEMORIAL OF INDONESIA

CONTRE-MÉMOIRE DE L'INDONÉSIE

CASE CONCERNING SOVEREIGNTY OVER PULAU LIGITAN AND PULAU SIPADAN

(INDONESIA/MALAYSIA)

COUNTER-MEMORIAL

SUBMITTED BY

THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

Volume 1

2 AUGUST 2000

CHAPTER I

INTRODUCTION

1.1 This Counter-Memorial is filed by the Republic of Indonesia pursuant to the Order of the Court dated 11 May 2000 fixing 2 August 2000 as the time-limit for the submission of Counter-Memorials by the Parties.

1.2 Indonesia's Counter-Memorial comprises seven chapters. After this Introduction, Chapter II will summarise Indonesia's and Malaysia's cases as presented in their respective Memorials. Section 1 will highlight the essential elements of Indonesia's case, which is straightforward in nature. Section 2 will thereafter attempt to untangle Malaysia's alleged chains of title which, in contrast to Indonesia's submissions, are confused and contradictory. For the convenience of the Court, Section 3 of Chapter II will briefly set out certain important areas of agreement between the Parties.

1.3 Chapter III will then analyse in greater detail the fallacies underlying Malaysia's claimed roots of title. This chapter will first show that the Sultan of Sulu did not possess an original title over Ligitan and Sipadan. Thereafter, it will rebut Malaysia's arguments based on the alleged presence of the Bajau Laut in the disputed area.

1.4 In Chapter IV, Indonesia will demonstrate that neither the British North Borneo Company (hereinafter the "BNBC") nor British North Borneo ever held title over the disputed islands and that Malaysia, consequently, could not have inherited a title from Great Britain. In this regard, Chapter IV will show that the disputed islands were not included in the following legal instruments on which Malaysia relies: the Grant by the Sultan of Sulu of Territories and Lands on the Mainland of the Island of Borneo in January 1878 to Messrs. Dent and Overbeck; the 1885 Protocol recognising the sovereignty of Spain over the Archipelago of Sulu; and the 1903 statement, or Confirmation, signed by the Sultan of Sulu concerning islands lying beyond three marine leagues off the mainland coast which were not included in the 1878 grant.

1.5 Chapter V will then review the basis of Indonesia's title, namely the 1891 Convention between Great Britain and The Netherlands[1], and rebut the arguments advanced by Malaysia in its Memorial concerning the effect of this Convention. The first two sections will deal with the terms of the Convention and the *travaux préparatoires*, while the last two sections will address the Dutch ratification process and the 1915 Agreement and the 1928 Convention between the United Kingdom and The Netherlands.

1.6 Chapter VI will show that the alternative chain of title advanced by Malaysia, namely that title passed via Spain to the United States and thence to Great Britain, is unfounded as well. In particular, Indonesia will show that the islands of Ligitan and Sipadan were not considered to be part of the Sulu Archipelago ceded by the Sultan of Sulu to Spain and that the disputed islands were not included within the territories transferred by Spain to the United States under the 1898 and 1900 treaties, or by the United States to Great Britain under the 1930 Anglo-U.S. Convention.

1.7 Chapter VII contains a rebuttal of Malaysia's assertion that its title is confirmed by an alleged pattern of possession and administration of the islands. In Section 1, Indonesia will analyse the legal role of *effectivités* in the case, Section 2 will then comment on the so-called acts of administration relied on by Malaysia. Following this, Section 3 will review the Dutch and Indonesian activities relating to the islands which confirm Indonesia's title. Section 4 charts the post-1969 activities of the Parties and the diplomatic history of the case and comments on the legal relevance of these events for the case. Finally, Section 5 will address the map evidence adduced by the Parties and will show that this evidence overwhelmingly confirms the fact that the islands were deemed first to fall under Dutch sovereignty and thereafter as appertaining to Indonesia following the latter's independence.

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[1] Malaysia refers throughout to the 1891 Convention as the "1891 Treaty". Its full title is the "Convention between Great Britain and The Netherlands defining Boundaries in Borneo". See IM, Annex 75, Vol. 3 and MM, Annex 17, Vol. 2. In this Counter-Memorial Indonesia will, except where quoting from Malaysia's Memorial, continue to refer to it as the "1891 Convention".

1.8 A further section has been added at the end of this Counter-Memorial, referred to as a Map Annex. This Map Annex contains detailed comments rebutting Malaysia's position regarding the map evidence.

1.9 There is one additional volume attached to Indonesia's Counter-Memorial containing further documentary evidence and other materials relied on by Indonesia, which has been organised in Annexes numbered from 1 to 38. An index of these Annexes may be found at the end of this volume.

CHAPTER II

SUMMARY OF INDONESIA'S AND MALAYSIA'S CASES AS PRESENTED IN THE PARTIES' MEMORIALS

Section 1. The Straightforward Nature of Indonesia's Case

2.1 The basis of Indonesia's sovereignty over Pulau Ligitan and Pulau Sipadan is straightforward. Indonesia inherited its title from The Netherlands whose title over the islands was confirmed by the 1891 Anglo-Dutch Convention.

2.2 Prior to the 1891 Convention, uncertainty existed over the precise extent of the territories of the Sultan of Boeloengan, to which The Netherlands had succeeded, and the territories forming part of the British Protectorate of North Borneo, which had previously been granted to the BNBC by the Sultans of Brunei and Sulu. However, a strong presumption existed at the time that the disputed islands formed part of the dominions of the Sultan of Boeloengan. As Indonesia demonstrated in its Memorial, and will show again in Chapter V hereto, the 1891 Convention resolved any remaining uncertainties by delimiting the respective territories of The Netherlands and British North Borneo both on the mainland and with respect to islands situated in the relevant area.

2.3 The subsequent activities of the interested parties, including The Netherlands, Great Britain, Indonesia and Malaysia, confirmed that sovereignty over the disputed islands vested first in The Netherlands and subsequently, by virtue of State succession, in Indonesia. In particular, the map attached to the Dutch Explanatory Memorandum prepared in connection with the ratification of the 1891 Convention and forwarded to the British Government confirmed that the line established by the 1891 Convention extended eastward from Sebatik, resulting in the islands in question falling on the Dutch side of the boundary. Moreover, maps issued by British sources on behalf of the BNBC and by official agencies of the Malaysian Government confirmed the scope of the 1891 delimitation as did the activities of The Netherlands in sending a naval vessel to the islands following the signature of the 1891

Convention and the conduct of Indonesia and Malaysia in granting oil concessions and erecting navigational aids in the relevant area[1].

2.4 As for the activities of third States in the region – notably Spain and the United States – they reveal that the disputed islands fall well outside of any areas that were deemed to appertain to them. The islands did not fall within the possessions of the Sultan of Sulu and were not considered to be part of Spanish territory that was transferred to the United States pursuant to the 1898 and 1900 treaties. Moreover, the 1930 Convention between the United States and Great Britain confirmed that the United States had no rights or interests in areas lying as far south or west as Pulau Ligitan or Pulau Sipadan.

Section 2. Confusion and Inconsistency in the Case Presented by Malaysia

2.5 In contrast with Indonesia's case which is based on a clear conventional title, the case advanced by Malaysia is founded on a series of complex and contradictory theories.

2.6 Although Malaysia's Memorial states that Malaysia's sovereignty over Ligitan and Sipadan is based on two separate, albeit – in Malaysia's view – inter-dependent strands[2], in reality Malaysia appears to be claiming sovereignty over the disputed islands on the basis of *three* distinct strands, as follows:

First, Malaysia, despite admitting that the disputed islands fell outside the scope of the 1878 grant[3], seeks to argue that title over the disputed islands was nonetheless transferred by the Sultan of Sulu to Messrs. Dent and Overbeck with the 1878 grant, subsequently transferred to the BNBC (Dent and Overbeck's successor), then to the British Government in 1888 with the agreement creating the State of North Borneo, and finally, by virtue of State succession, to Malaysia.

Second, Malaysia claims, quite inconsistently with its first theory, that title was transferred by the Sultan of Sulu to Spain with the Protocol confirming the Bases of

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[1] See, generally, Chapter VI of Indonesia's Memorial (hereinafter IM).

[2] Malaysia's Memorial (hereinafter MM), para. 5.1.

[3] *Ibid.*, para. 5.19.

Peace and Capitulation in 1878, then by Spain to the United States with the Convention of 1900 supplementing the Treaty of Paris of 1898, subsequently by the United States to the British Government pursuant to the 1930 Convention, and finally to Malaysia by Britain with the 1963 Agreement, under which North Borneo became part of the Federation of Malaysia.

Third, Malaysia asserts that, in any event, the disputed islands have been administered by the BNBC, Great Britain and Malaysia itself. According to Malaysia, this administration was challenged neither by Spain, The Netherlands nor by its successor in title, Indonesia.

2.7 The first obvious problem with the case presented by Malaysia is that it rests on the wholly unsubstantiated assertion that the Sultan of Sulu had title over the islands of Ligitan and Sipadan and was therefore in a position to convey that title either to the BNBC or to Spain. However, Malaysia has failed to adduce any evidence demonstrating that sovereignty over either island did indeed vest in the Sultan of Sulu at the relevant time.

2.8 Malaysia attempts to brush aside this embarrassing lacuna by alleging that an interconnection exists amongst all the islands of the area by virtue of human and economic factors. Pursuant to this argument, it is said that the allegiance to the Sultan of Sulu of certain nomadic tribes active in the area, i.e. the Bajau Laut, shows that these indigenous peoples, and the islands around which they occasionally fished, were under the control of the Sultan.

2.9 As Indonesia will demonstrate in Chapter III, Malaysia has failed to show that the alleged links between the Bajau Laut and the Sultan of Sulu amounted to anything more than personal and commercial relations. Nothing in the documentary evidence submitted by Malaysia even remotely suggests that the islands of Ligitan and Sipadan fell within the limits of Sulu jurisdiction.

2.10 Moreover, even admitting, *arguendo*, that the first step of Malaysia's construction is valid, i.e. that the Sultan of Sulu had title over the disputed islands, the logic of Malaysia's two-headed arguments still remains problematic. The different strands of Malaysia's alleged title cannot all be maintained at the same time: either the Sultan of Sulu ceded his title to Dent and Overbeck or to Spain. Malaysia cannot have it both ways.

2.11 If, on the one hand, title had been ceded to Dent and Overbeck, then there can be no chain of title passing through Spain, the United States and thence Great Britain. On the other hand, if title over Ligitan and Sipadan remained with Spain, then the BNBC could not have acted, as Malaysia argues, "on the basis" that it had control over the islands, and its so-called acts of administration on the islands could not displace Spain's pre-existing legal title.

2.12 In any event, Malaysia has been unable to produce any evidence demonstrating that, specifically, the islands of Ligitan and Sipadan were under the sovereignty of the Sultan of Sulu or that they were included in any of the relevant transactions and conventional instruments vesting ultimate title in Great Britain and Malaysia. In each case, Malaysia's arguments are built on unsupported and general assertions which are contradicted by the relevant treaties and conventions and ignore the settlement achieved with the 1891 Convention.

Section 3. Areas of Agreement between the Parties

2.13 Unsurprisingly, the Parties' Memorials disagree on a number of important issues, including the interpretation of the conventional and factual history of the case. However, in Indonesia's view, it is significant that the Parties' submissions contain some areas of agreement on certain key issues in the case. For the convenience of the Court, this section will summarise the main points of agreement between the Parties as evidenced in their Memorials.

2.14 Although the chains of title invoked by the Parties differ, they both agree that, albeit uninhabited, the islands of Ligitan and Sipadan were never *terrae nullius* during the relevant period[4]. As a result, the islands were not open to occupation by any State. Moreover, the fact that the islands were not *terrae nullius* means that any alleged *effectivités* invoked by

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[4] *Ibid.*, para. 5.8(c) and IM para. 4.1.

Malaysia must be considered in their proper legal context and in the light of the relevant legal instruments.

2.15 Both Parties agree that the disputed islands were not covered by the 1878 grant by the Sultan of Sulu since they are situated more than three marine leagues from the coast[5]. Moreover, with respect to the 1903 Confirmation from the Sultan of Sulu to Great Britain, the Parties concur that this document did not mention the disputed islands as falling within that cession[6].

2.16 The Parties also agree on the definition of the territory relinquished by Spain in favour of Great Britain pursuant to Article III of the 1885 Protocol between Spain, Great Britain and Germany, and they recognise that the islands of Ligitan and Sipadan fell outside the terms of Article III of this Protocol[7].

2.17 In addition, there is agreement that the islands of Sipadan and Ligitan do not fall within the line drawn by the 1898 Treaty between the United States and Spain[8]. This, in Indonesia's view, confirms the fact that neither the Sultan of Sulu nor Spain had a claim to the disputed islands.

2.18 Finally, the Parties agree that the dispute crystallised in 1969 during the negotiations over their respective maritime boundaries[9]. In Indonesia's view, this date has important legal consequences in the light of which the subsequent conduct of the Parties must be assessed.

2.19 As a concluding remark, Indonesia considers it important to note its agreement with Malaysia's comment at para. 4.5 of its Memorial that the diplomatic exchanges between the Parties do not affect the legal issues before the Court. Indonesia notes, however, that despite this agreement, Malaysia has relied on certain arguments made by Indonesia in the course of diplomatic discussions since 1969[10], and has annexed to its Memorial the Joint Report on Discussions between Dato' Seri Anwar Ibrahim, Deputy Prime Minister of Malaysia and Mr. Moerdiono, Minister, State Secretary of the Republic of Indonesia, on the Issue of Sovereignty over Pulau Ligitan and Sipadan and their recommendations[11]. Because of the lack of its legal relevance, Indonesia has not deemed it appropriate to refer to this material.

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[5] *Ibid.*, para. 5.19 and the location map at Insert 8, on p. 39 showing the disputed islands outside the band of nine nautical miles from the coast; see also IM, paras. 3.28, 7.3, 7.4, and Map 3.1 facing p. 14.

[6] IM, paras. 7.15-7.16 and MM, paras. 5.33-5.35.

[7] See Chapter VII in IM in general, and in particular paras. 7.28, 7.29, 7.34-7.39 and 7.58, as well as paras. 3.34 and 3.63 and Map 5.1 opposite p. 66; see also MM, paras. 5.17-5.19.

[8] See MM, para. 5.22 and Insert 9 on p. 44, and IM, paras. 7.30-7.31 and Map 7.2 opposite p. 140.

[9] See MM, para. 2.4 and IM para. 8.3.

2.20 The points outlined in this section represent the most important areas of agreement between the Parties. With respect to the numerous issues on which the Parties disagree, these will be discussed as necessary by Indonesia in subsequent chapters. Failure by Indonesia to address all of the points raised by Malaysia in its Memorial, however, in no way signifies that Indonesia agrees with Malaysia's account.

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[10] *Ibid.*, para. 2.8.

[11] *Ibid.*, Annex 75, Vol. 3.

CHAPTER III

THE FALLACIES UNDERLYING MALAYSIA'S CLAIMED ROOTS OF TITLE

3.1 The purpose of this chapter is to show that Malaysia has failed to establish in any way the existence of a territorial title over the disputed islands, which it claims to have inherited in one way or another from its predecessors (Section 1). In particular, the uncertain interconnection between the Bajau Laut and the Sultan of Sulu does not establish any such territorial title (Section 2). The absence of any original title belonging to the Sultan of Sulu thus clearly excludes both "strands" of the Malaysian argument (Section 3).

Section 1. Lack of Original Territorial Title Inherited by Malaysia

3.2 Among the points of agreement between the Parties[1], there is at least one undisputed issue which is of great importance. In Malaysia's words: "[t]here can be no suggestion that any [of the islands] is, or at any relevant time was, *terra nullius*"[2]. This implies that the Parties (and their predecessors) possess and have possessed at all relevant times a *title* which created or established their territorial sovereignty[3].

3.3 As already noted in Chapter II, Malaysia's argument becomes very confused as soon as it seeks to determine precisely on *which* title its territorial claim is founded.

3.4 At para. 5.1 of its Memorial, Malaysia explains with more clarity than it generally uses on this issue that sovereignty over Ligitan and Sipadan is:

> "based on two independent but also intersecting strands. First, title to the islands was acquired by grant of the previous sovereign, a situation which was recognized by and was opposable to all relevant States in the region as a result of published treaties. Secondly, following from the 1878 grant to Baron von Overbeck, the islands have been peacefully and continuously administered by Malaysia's predecessors in title, and by Malaysia"[4].

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[1] See Chapter II Section 3, above.
[2] MM, para. 3.1. See also, MM, para. 5.8 and IM, para. 4.1.
[3] Kohen, M.G., *Possession contestée et souveraineté territoriale*, PUF, Paris, 1997, p. 148.
[4] MM, para. 5.1; see also paras. 2.1-2.3.

3.5 The decision to follow both lines of argument simultaneously poses complex problems regarding the internal logic of the exercise. It is difficult to understand how Malaysia can claim that its title derives from the cession granted by the Sultan of Sulu to Spain of the whole of "the Archipelago of Sulu and the dependencies thereof" in 1878[5] *while also* claiming that its title derives from the continuous administration of the disputed islands by Malaysia's "predecessors", namely the BNBC (similarly since 1878) and then Great Britain. Either way, the same issue must be addressed: either Ligitan and Sipadan were ceded to Spain, in which case neither the BNBC nor Great Britain could have administered them "as sovereign"[6], or alternatively they belonged exclusively to the BNBC and then Great Britain as a result of the 1878 grant in which case Malaysia cannot claim a chain of title through Spain, followed by the United States, followed by Great Britain upon the coming into force of the 1930 Convention[7].

3.6 In any event, what is significant is that, according to both hypotheses, the Sultan of Sulu held original title over the islands[8]. Yet there is no point in its Memorial where Malaysia establishes, even in a tenuous manner, that the Sultan, as sovereign or otherwise, ever exercised any authority over Ligitan and Sipadan or claimed the islands *à titre de souverain.*

3.7 Malaysia's argument merely consists in asserting that the Sulu Sultanate extended over a section of the north-eastern coast of Borneo, an area which was in fact the subject of a competing claim by the Sultan of Brunei[9]. In Indonesia's opinion, this argument confirms Indonesia's analysis of "the legal notion of territory as historically perceived by local Rulers" as set out in Chapter IV, Section 2 of Indonesia's Memorial. Malaysia completely fails to establish in any way the precise southern extent of the Sultanate of Sulu and even less that the Sultanate included the islands of Ligitan and Sipadan, which, it should be recalled, are some distance from the coast and were uninhabited.

3.8 In this regard, a series of peremptory assertions cannot take the place of evidence, all the more so since these affirmations are contradicted by the actual documents upon which they are apparently based.

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[5] *Ibid.*, para. 5.13.
[6] See *Legal Status of Eastern Greenland, Judgment, 1933, P.C.I.J.*, Series A/B No. 53, p. 22 at p. 46.
[7] See MM, para. 5.43.
[8] *Ibid.*, paras. 5.3-5.8.
[9] *Ibid.*, para. 5.6.

3.9 In describing the "Dependencies of the Sultanate of Sulu on the East Coast of Borneo"[10], Malaysia asserts that: "The Sultanate was a substantial maritime power, exercising authority over a considerable number of islands lying *between mainland Borneo and the Philippines*, as well as over the Sulu Archipelago itself"[11]. It is, however, quite obvious that Sipadan and Ligitan lie to the *south* of what was then British North Borneo and Darvel Bay, and to the *south and west* of the outermost islands of the Sulu Archipelago. It is impossible to see how they can conceivably be included in a description of "islands lying *between* mainland Borneo and the Philippines" or as part of the Sulu Archipelago itself. For example, Map No. 7.2 in Indonesia's Memorial, which is reproduced in this Counter-Memorial as Map 6.1 facing page 112, shows both the spatial relationship "between mainland Borneo and the Philippines" and the location and extent of the Sulu Archipelago, which, for these purposes, may be considered as extending no further than the important island of Sibutu. Similarly, a map published in 1901 in the Journal of the Royal Netherlands Geographical Society and reproduced at Annex 1, shows that the "former limit of Boeloengan" extended up to Tinagat as shown by the line of red crosses[12]. The 1903 Stanford map of Borneo[13], reproduced opposite page 55 as Map 4.1, again shows clearly that Sipadan and Ligitan are in the north-western part of the Sulawesi (Celebes) Sea, and can in no way be described as lying in the Sulu Sea or as forming part of the Sulu Archipelago.

3.10 By way of contrast, this section of Malaysia's Memorial merely *assumes* that Sipadan and Ligitan are, as a matter of fact, part of the Sulu Archipelago and that they can be described as "islands lying between mainland Borneo and the Philippines". It goes on to describe the "procurement system"[14] used by the Sultanate of Sulu, under which "trading in a whole range of commodities (birds' nests, trepang, etc.) occurred *via Sulu*, and local people *made frequent visits* there [presumably, to Sulu] for this and other purposes"[15]. Subsequently, there is a description by James Hunt of the procurement system and the Mangidora district in the early part of the 19th century, presumably, intended to identify the Sulu dominions as including Sipadan:

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[10] *Ibid.*, paras. 5.3-5.8.

[11] *Ibid.*, para. 5.3. Emphasis added.

[12] For further discussion of this map, see para. 5.85, below.

[13] IM, Map No. 6.4, facing p. 119 and Map Atlas, Map No. 9.

[14] For a description of the "procurement system", see Reynolds, J.K., *Towards an Account of Sulu and its Borneo Dependencies – 1700-1878*, thesis, Master of Arts (History), University of Wisconsin, 1970, pp. 50-64.

[15] MM, para. 5.3. Emphasis added.

> "Giong river is situated on the north-west part of the bay of that name [Darvel Bay]; here are considerable quantities of blackish birds nests procurable. *Pulo Giya* [P. Gaya], off this coast, abounds with deer, & *Separan* [Sipadan] with abundance of green turtle. There is also a species of birds' nests like driven snow found on Pulo Giya and much tripang is collected about the bay"[16].

An examination of Insert 7 at p. 32 of Malaysia's Memorial[17] shows the locations just identified. Presumably the north-west part of the bay is marked by Silam and Lahad Datu, although the Giong river is not shown on Insert 7. Silam, which is in the north-west part of Darvel Bay is some 56 miles from the island of Sipadan and some 61 miles from the island of Ligitan and Darvel Bay itself would appear to have no geographic relation to the islands whatsoever. The island identified as "Pulo Gaya" is shown to the north-east of Semporna and almost due west of the island of Sibutu; again, it is many miles away from Ligitan (and even further from Sipadan) and has no connection with either island.

3.11 The purpose of this "identifying" description thus seems to be to describe not the extent of the dominions of Sulu, which the wording of the section heading appears to imply, but rather the location and nature of the "very valuable articles for commerce" there identified, such as "birds' nests [...], camphor, elephants, cattle" and the like. The first paragraph of the quotation by James Hunt at para. 5.4 of Malaysia's Memorial shows that the geographical scope of the description covers an area far removed from the disputed islands: "The province of Mangidora forms the north eastern part of Borneo, extending itself towards the Sulo Archipelago in a long narrow point named Unsang, or cape Misfortune [Tanjung Unsang]". Yet a mere glance at Insert 7 on p. 32 of Malaysia's Memorial reveals that Tanjung Unsang lies on the north-eastern coast of the far eastern promontory of north-east Borneo, across the Sulu Sea from Palawan, facing Sulu (Jolo) and, further afield, facing the south-western tip of Mindanao Island within the Philippine Archipelago. It is quite clear that Hunt's description of local produce and resources does not indicate the geographical scope of the "Dependencies of the Sultanate of Sulu", but was rather intended to indicate only the commodities that could be obtained by "local people" and processed through the "procurement system" quite obviously dominated, in those areas, by the Sultan of Sulu by virtue of his maritime power in the region. This is, however, far from identifying "*Separan* [Sipadan]" as forming a geographical *part* of the Sulu dominions, rather than being a neighbouring island with commodities that were sought after by the local people from Sulu and elsewhere[18]. This is confirmed by the title itself of Dalrymple's chart of those seas on which this "description" is based, namely: *A Map of part of Borneo and the Sooloo Archipelago*[19] and which does not indicate any territorial limits for any of the political entities in the region.

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[16] *Ibid.*, para. 5.4.

[17] See also Map No. 9 in Indonesia's Atlas.

3.12 The subsequent paragraphs in Malaysia's Memorial advance the matter no further. Indeed, the reference in para. 5.5 to the Rennel manuscript adds nothing. It locates the "Dominions of Sooloo" as being, again, "between the Philippines and Borneo", and as including "a large part of the Coast of Borneo", the island of Palawan (far to the north), and "the islands that form the Straight of Balabac". The latter do not appear on Insert 7 since they lie too far to the north: the "Straight of Balabac" is now called the "Balabac Strait", the far western entrance to the Sulu Sea, stretching approximately from 116° 30' to 118° E, 7° 30' N, between Balabac Island (south-west of Palawan) and the island of Banggi off the coast of Sabah. It is some *three hundred miles* from Sipadan and Ligitan.

3.13 Para. 5.7 of Malaysia's Memorial details an 1875 attack by Bejaus from Omadal on an Austrian frigate. Omadal is to the north of Danawan and Si Amil, which are in turn to the north of Ligitan. However, it is revealing that the letter of the British Acting Consul at Labuan of 15 July 1875 on the subject of this attack notes that:

> "The Dutch also are unusually active on the east coast, extending their influence from Coti over Berow and Bulungan, which they have long neglected, and where the English merchants of Singapore have trading Settlements. A vessel under that flag from Macassar recently loaded a cargo of pearl-shell at the Tawi Tawi Islands, and her captain communicated with Sulu without being put to much inconvenience by the so-called blockade"[20].

Since the Tawi Tawi islands belong to the Sulu Archipelago, this makes it clear that at that time the Dutch were present in this area[21].

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[18] James Hunt's description is also referred to at MM, para. 3.14.

[19] Annex 2.

[20] MM, Annex 77, Vol. 4.

[21] On this point, see paras. 3.66 *et seq.*, below.

3.14 The next section of this part of Malaysia's Memorial deals with the 1870 map by van Carnbée and Versteeg[22]. The map, however, shows virtually nothing of interest. Sipadan and Ligitan – the latter of which is wrongly located – are not coloured in any way that might indicate that they appertain to the "*Gebied van Soeloe of Solokh*" (territory of Sulu or Solok). There is no visible difference between their depiction and that of "P. Sibalik" (Sebatik). It is obvious that they are close to a "boundary" between local powers, but that is not surprising. Indeed, the limited usefulness of this map is apparent from the very words used by Malaysia in its Memorial:

> "To the north and well to the east of the boundary line depicted on the map are shown certain islands *clustered around Darvel Bay*, including specifically 'P. Siparan' (Sipadan) and 'P. Legetan' (Ligitan). *The depiction of the islands and coastline here is highly inaccurate*, by comparison with the areas further to the south where the Dutch had at that time some measure of control"[23].

3.15 No one denies that Sipadan and Ligitan lie close to the line of territorial allocation – to be subsequently determined in 1891 between Great Britain and The Netherlands, and no one denies that they lie close to the notional boundary, vague though it may have been, separating the respective areas of overlapping claims of the Sultan of Sulu and the Sultan of Boeloengan. But to conclude on the basis of a "highly inaccurate depiction" that Sipadan and Ligitan fell within the Sultanate of Sulu is impressionistic in the extreme, and even that vague impression can be seen to have been corrected, precisely and to the minute, by the Anglo-Dutch Convention of 1891 adopting the 4° 10' N parallel as the line of latitude for the of allocation for offshore territories.

3.16 No more needs to be said about the quotations given from the parliamentary questions in The Netherlands concerning the 1878 Sulu grant to Dent and von Overbeck. What useful inference can be drawn from a statement as vague as that given: "We have never disputed the authority of Spain over the dependencies of Sulu *in the north-east portion of the island* [of Borneo]"?[24]

3.17 Similarly, at para. 5.42, Malaysia makes the unsubstantiated affirmation:

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[22] Map 3 in Malaysia's Atlas.

[23] MM, para. 5.8 (a). Emphasis added.

[24] *Ibid.*, para. 5.8 (b). Emphasis added. Regarding the Malaysian interpretation of the Dutch Memorandum in relation to the Bajau Laut, see para. 3.54, below.

> "There is no doubt that a license had been validly granted to the Company [BNBC] to administer the islands to the west of the line drawn by the 1907 Exchange of Notes, which, for the reasons already given, clearly covered Ligitan and Sipadan".

On the contrary, nothing could be less certain. In particular, Malaysia not only omits any reference to the fact that the 1878 grant did not cover islands situated beyond "three marine leagues of the coast"[25], but also sees it fit to include only a selective and misleading quotation from the relevant provision[26], when the two islands in dispute are situated well outside of this description.

3.18 To summarise, Malaysia's own description of the Sultanate of Sulu is extremely vague: the 1837 description by James Hunt relates to the general area, and is quite imprecise as to the geographic location of Sipadan, which is lumped together with disparate and distant features and is clearly mentioned here *as a source of commodities* for Sulu rather than as a *possession* of Sulu; the Rennel manuscript reference is wholly off the point; and the 1875 account of the Bajau attack applies to islands noticeably to the north of Ligitan and indeed confirms the presence of the Dutch in the region north of the islands at that time[27]. Finally, the discussion of the vague and imprecise 1870 van Carnbée and Versteeg map and of the BNBC grant is tendentious and inconclusive and merely shows the uncertainty surrounding the pre-1891 situation.

3.19 In any event, Malaysia's assertions are categorically rejected by His Highness Datu Bungso T. Amilusin, the pretender to the throne of the Sultanate of Sulu, who made a formal declaration on 30 April 1997 in the context of the current dispute, in which he solemnly declared and acknowledged that:

> "1) Tawau residency consisting [of] the Island of Sipadan and the Island of Ligitan belongs to the Sultanate of Bulungan.
>
> "2) The Island of Sipadan and the Island of Ligitan, were never have been a part of the Sultanate of Sulu.
>
> "3) The Letter of Grant of 22nd of January, 1878 and the Letter of Confirmation of 22nd of April, 1903, signed by His Highness the late Sultan Jamalul Adzam and the late Sultan Jamalul Kiram Alhaj, did not include the

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[25] See IM, Vol. 2, Annex 17.

[26] See MM, para. 5.11.

[27] See also, para. 3.67, below.

Island of Sipadan and the Island of Ligitan as those two Island[s] belong to the Sultanate of Bulungan"[28].

3.20 Indonesia recognises that the islands in question were certainly not *res nullius* when Borneo was colonised by The Netherlands and Great Britain. As Indonesia has demonstrated in its Memorial[29] and as is evidenced by the solemn declaration of the current pretender to the Sultanate of Sulu referred to above, the islands fall under the sovereignty of the Sultan of Boeloengan. At most, even if some confusion persisted and even if, in view of the special characteristics of the local rulers' relationship to their territorial possessions, one were to consider the situation prior to 1891 as somewhat ill-defined, any uncertainty was removed with the conclusion of the 1891 Convention.

3.21 Moreover, any uncertainties that did exist tended to confirm that Sipadan and Ligitan lay beyond the limits of the possessions of the Sultan of Sulu. Thus, it seems that the Sultan of Sulu acquired "legal title" (admitting the concept existed at all at that time in the relevant area) over his possessions in North Borneo as a result of a cession granted by the Sultan of Brunei in 1704. M.O. Ariff considers that what had been ceded by the Sultan of Sulu in 1763 to the East India Company would have been the land "which he had acquired from the Sultan of Brunei in 1704"[30]. According to L. Wright, "[i]ndeed, the legitimacy of the Sulu claim to the territory is in considerable doubt [...] and only the weight of the Sulu tradition supports the claim"[31]. Even though it may be argued that the date of 1704 is not entirely reliable, there can be no doubt that the Sultan of Sulu's "title" (if any) over North Borneo derives from a cession from the Sultan of Brunei[32]. As this cession is said to cover the mainland area "together with all the islands which lie within nine miles from the coast"[33], the Sultan of Sulu cannot have acquired title over Sipadan and Ligitan from the Brunei cession, and neither island fell under his territorial jurisdiction. This conclusion has been implicitly confirmed by Professors A.B. Lapian et N. Kazufumi, when they write that Sitang-kai Pulau was "a tiny island situated in the southwestern end of the Sulu Archipelago"[34]. As this island, representing the south-western end of the Sulu Archipelago, is situated well to the east of Ligitan[35], it would appear that neither Sipadan nor Ligitan could have formed part of the Sultan of Sulu's possessions.

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[28] Annex 3.

[29] IM, paras. 4.55-4.72.

[30] M.O. Ariff, *The Philippines Claim to Sabah: Its Historical, Legal and Political Implications*, Singapore, Oxford University Press, p. 5. See also Dalrymple, A., *A Full and Clear Proof that the Spaniards Can Have No Claim to Balambangan*, London, 1774, p. 31, cited by L. Wright, *The Origins of North Borneo*, Hong Kong University Press, 1970, reprinted 1988, at p. 35, fn. 22.

[31] *Ibid.*, p. 35. L. Wright also notes that in the mid 1860s, "most of [the local chiefs in the northern part of Brunei] considered themselves independent and were so recognized later on when the British North Borneo Company commenced buying these enclaves and granting pensions to the rulers", *ibid.*, p. 39.

[32] See, for instance, "The Case of North Borneo", CO 1030/536, p. 1, which indicates 1850 as the date of the cession. See also Ko Swan Sik, "Asian Territorial Disputes, with Special Reference to the Islands of Sipadan and Ligitan: Succession to Dutch and British Titles?" in T.D. Gill and W.P. Heere (ed.), *Reflections on Principles and Practice of International Law – Essays in Honour of Leo J. Bouchez*, Nijhoff, The Hague, Boston, London, 2000, p. 116. The author dates the cession at 1704, while recognizing that there is uncertainty in this respect. However, in his very detailed study of the cession, B.K. Short gives 1704 as the most likely date for the cession, see "Brunei, Sulu and Sabah: an Analysis of Rival Claims", *Brunei Museum Journal*, Vol.1, No. 1, 1969, pp. 133-134, Annex 4.

[33] See "The Case of North Borneo", *op. cit.*, p. 2.

3.22 A further document is revealing in this respect. In an article first published in the *Java Bode* in February 1882 and republished in the *Singapore Straits Times* of 9 February 1882, where it was reproduced as an enclosure to a letter from Sir Rutherford Alcock, Chairman of the North Borneo Company to Earl Granville, it was reported that when the Assistant Resident of Cotie "visited the districts beyond the frontier as it then stood, and inquired of the inhabitants whether they owed allegiance to Bulungan or Sulu", not only the inhabitants of the districts up to the Sibuko River, but also those having emigrated from the north of the river "declared that when they dwelt in their previous Settlement beyond that river they considered themselves as subjects of Bulongan"[36]. Since the mainland coast fell under the sovereignty of the Sultan of Boeloengan, it follows that the islands of Sipadan and Ligitan, lying off this coast, would likewise fall under the Sultan of Boeloengan's sovereignty.

Section 2. Malaysia's Argument Based on the Presence of the Bajau Laut in the Disputed Area

3.23 Malaysia similarly places great emphasis on the relationship that existed between the Sultan of Sulu and the Bajau Laut, whose presence in the disputed area allegedly proves Sulu sovereignty over Ligitan and Sipadan.

3.24 At no point in its Memorial does Malaysia specifically undertake a factual and legal discussion regarding the presence of the Bajau Laut on the north-eastern coast of Borneo and on the neighbouring islands. Nevertheless, Malaysia tries to make extensive use of this alleged presence, especially in Chapters 3, 5 and 6 of its Memorial. In this regard, two distinct arguments can be discerned:

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[34] "Research on Bajau Communities : Maritime People in Southeast Asia", *Asian Research Trends: A Humanities and Social Science Review*, No. 6, 1996, p. 50 at Annex 5.

[35] *Ibid.*, maps on p. 47. See also Map 3.1 reproduced following p. 31.

[36] Annex 6.

(a) that the Bajau Laut allegedly were at the heart of the creation of a sort of self-contained set of islands, including Ligitan and Sipadan; and

(b) that the Bajau were allegedly subjects of the Sultan of Sulu before becoming subject to British administration, whilst they never had any ties with the Dutch authorities.

3.25 These two arguments are inseparable in the sense that it is only if one can speak of a "Bajau Laut State" or "entity" which included the disputed islands *and* only if this State or entity was under the sovereignty of the Sultan of Sulu, and subsequently Great Britain, that the existence of an original Malaysian title over Ligitan and Sipadan inherited from its predecessors can be accepted. However, these two arguments do not stand up to scrutiny either individually or collectively.

A. A "Bajau Laut" Entity Comprising Ligitan and Sipadan?

3.26 The essential nature of the Bajau Laut is the tribe's maritime nomadism[37], which is indeed recognised by Malaysia when it describes the Bajau Laut as "Sea Gypsies"[38]. Consequently, Malaysia's use of these Bajau settlements, which by their very nature were temporary and shifting, in order to establish the existence of any territorial title, is peculiar[39].

3.27 This is all the more so since it is widely acknowledged that the Bajau Laut's presence stretched over a very wide geographical zone. According to Clifford Sather for example:

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[37] The Bajau Laut should not be confused with the Bajau Darat, a land-based tribe. See Sather, C., *The Bajau Laut. Adaptation, History, and Fate in a Maritime Fishing Society of South-Eastern Sabah*, Oxford University Press, 1997, p. 8: " 'Bajau Laut' may also be applied, not simply to boat nomads and former nomads, but to all coastal-dwelling 'Bajau', as opposed to those who live inland from the sea for whom the Malay label 'Bajau Darat', literally 'inland Bajau', is sometimes used (Asmah, 1980). In this book, the name 'Bajau Laut' is used in the prior sense [...]"; see also p. 63 where Sather describes them as "sea people". They are also sometimes called Bajau Samal (See Piper, M., "Settlements on Eight Semporna Islands", *Sabah Society Journal*, Vol. VII (4), 1984, pp. 305 and 317).

[38] MM, para. 3.7; see also para. 3.45, below.

[39] See para. 3.47, below for a discussion of the *Western Sahara* case in this regard.

> "the Bajau Laut [...] lacked a single focus of settlement. Instead they were scattered in small enclaves throughout the entire Sulu Archipelago, and *beyond as well*"[40],

an assertion which he confirmed over twenty years later, by emphasising that:

> "the nomadic Bajau Laut [...], being highly mobile, were scattered over much of the Sulu zone *and beyond*"[41].

3.28 This zone not only covers the Sulu archipelago, but also the Philippines in their present form, Johore, Singapore, Celebes and the whole of the eastern coast of Kalimantan, as is confirmed in a recent study by Clifford Sather:

> "the Bajau Laut, the largest and most widely dispersed of these groups, [were] living in the Sulu Archipelago of the Philippines, eastern Borneo, Sulawesi, and the islands of eastern Indonesia"[42].

More preciesly, Clifford Sather notes:

> "If the identification of Dinawan is correct, Dewall's account suggests that during the early nineteenth century, Semporna may well have served as a rendezvous and staging point from which the Bajau Laut fleets sailed southward into Indonesian waters. This would corroborate local Bajau Laut oral tradition which points to regular contacts in the past between Semporna and Bajau Laut settlements in the Straits of Macassar"[43],

and that:

> "In eastern Indonesia, the largest numbers of Sama-Bajau are found in the smaller islands and coastal districts of Sulawesi [...]. Elsewhere, settlements are reportedly present near Balikpapan in East Kalimantan, on Maratua, Pulau Laut, and Kakaban, and in the Balabalangan islands off the eastern Kalimantan coast [[44]]"[45].

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[40] Sather, C., "Sulu's Political Jurisdiction over the Bajau Laut", in Sather C., (ed.), "Traditional States of Borneo and the Southern Philippines", Borneo Research Bulletin, Vol. 3, No. 2, December 1971, Borneo Research Council, pp. 58-62, at p. 59. Emphasis added.

[41] Sather, C., *The Bajau Laut. Adaptation, History, and Fate in a Maritime Fishing Society of South-Eastern Sabah*, *op. cit.*, p. 40. Emphasis added.

[42] *Ibid.*, p. 321.

[43] *Ibid.*, p. 30.

[44] Dermawasjah, A.D.H. and Noor, B., *Bahasa Bajau*, Jakarta: Pusat Pembinaan dan Pengembangan, Department Pendidikan dan Kebudayaan, 1979, pp. 7-10; Sather, C., "Bajau" in Levinson, D., (ed.), *Encyclopedia of World Cultures*, Vol. 5, *East and Southeast Asia*, G.K. Hall, Boston, 1993, p. 30.

[45] Sather, C., *The Bajau Laut Adaptation, History and Fate in a Maritime Fishing Society of South-Eastern Sabah*, *op. cit.*, p. 4. See also the map at Annex 7 which shows that the islands of Maratua and of Kakaban are situated very far to the south of Sipadan and Ligitan.

3.29 This presence of the Bajau Laut on the eastern coast of Borneo is coupled, moreover, with a presence on the western coast[46].

3.30 Traces of their activities in the southern-most section of the disputed area can be found dating back to the 18th century. J.F. Warren thus noted that:

> "The reefs, islets, and bays of the southeast coast of Borneo have long been places of rendezvous and encampment for the Samal Bajau Laut. As early as 1773, Forrest encountered nomadic Samal fishermen along the southern edge of the zone"[47].

3.31 Studies of the mythical origins of the Bajau Laut confirm this, in that they are based on the belief that the Bajau originated from *Johore*. This mythology seems to correspond very much with the reality of the situation, since it is agreed upon by the various Bajau Laut populations[48]. According to A.B. Lapian and K. Nagatsu, their research into Bajau legends permitted them to conclude that:

> "There are [...] good reasons to suggest that in former times the Bajau occupied a much wider area than today"[49].

This presence had, moreover, been noted by the Dutch and is recorded in writings dating from 1682 of Robertus Padbrugge, who was the Dutch East India Company Governor of Maluku in the 17th century[50], and in the later writings from 1839 of Vosmaer, a Dutch trader[51]. This familiarity of the Dutch with the Bajau Laut dating as far back as the 18th century is confirmed by the use of the term "Bajau" in Dutch ethnographic literature from this period[52].

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[46] See, for example, Tregonning, K.G., *A History of Modern Sabah (North Borneo 1881-1963)*, University of Malaysia Press, 1967, p. 43.

[47] Warren, J.F., *The Sulu Zone 1768-1898*, Singapore University Press, 1981, p. 69.

[48] See Sather, C., *The Bajau Laut. Adaptation, History and Fate in a Maritime Fishing Society of South-Eastern Sabah*, *op. cit.*, p. 17, and generally pp. 17-20. See also Evans, I.H.N., "Notes on the Bajaus and Other Coastal Tribes of North Borneo", *Journal of the Malayan Branch of the Royal Asiatic Society*, Vol. 25, No. 158, 1952, p. 49.

[49] Lapian, A.B. and Nagatsu, K., "Research on Bajau Communities: Maritime People in Southeast Asia", *Asian Research Trends : A Humanities and Social Science Review*, No. 6, 1996, pp. 43- 70, at p. 49; see also pp. 46-47, and in particular Map 1 at p. 47, which confirms the presence of the Bajau Laut in the south-east of Borneo, Annex 5.

[50] *Ibid.*, p. 50.

[51] *Ibid.*, p. 52.

[52] See Sather, C., *The Bajau Laut. Adaptation, History and Fate in a Maritime Fishing Society of South-Eastern Sabah*, *op. cit.*, pp. 6-8.

3.32 Furthermore, the Dutch familiarity with the Bajau Laut sometimes resulted in closer links being forged. For example, in the writings of M. Piper, there are descriptions of the assistance that the Bajau Laut gave to the Dutch authorities in the gathering of information:

> "They were reported off eastern Borneo in 1779 by Capt. T. Forrest [[53]] who commented : 'These people (Bajaus) are very useful to the Dutch East India Co., in carrying intelligence speedily from place to place, and giving information of whatever happens'"[54].

3.33 Further journeys, other than those described in the original myths[55], subsequently took place regularly:

> "Until the 1920s, the Semporna Sama Dilaut, who were then still boat-living, regularly sailed southward through the Straits of Makassar to visit related Sama Dilaut communities along the eastern coast of Kalimantan. From here, a few sailed on to southern Sulawesi"[56].

3.34 These journeys gave concrete expression to the idea of the Bajau Laut belonging to a common "family". In fact, at the start of the century:

> "the Semporna Bajau Laut continue[d] to regard those living in East Kalimantan as, belonging like themselves, to a larger Sama Dilaut population"[57].

3.35 Far from being occasional, these journeys were considered as normal. According to Clifford Sather:

> "In the past, the Bajau Laut moved *easily* between Sabah, the southern Philippines, eastern Kalimantan, and Sulawesi"[58].

This author further clarifies:

> "It was not uncommon at the time for families to sail 48 kilometres to the east and southeast of Bangau-Bangau, and some 24-32 kilometres to the north, south, and west"[59].

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[53] Fn. 10 refers to Capt. T. Forrest : *Voyage to New Guinea and the Moluccas from Balambangan.* 1774 – 1776 pub. 1779

[54] Piper, M., "Settlements on Eight Semporna islands", *Sabah Society Journal,* VII (4), p. 318.

[55] See para. 3.31, above.

[56] Sather, C., *The Bajau Laut. Adaptation, History and Fate in a Maritime Fishing Society of South-Eastern Sabah, op. cit.*, p. 87. Emphasis added.

[57] *Ibid.*

[58] *Ibid.*, p. 87. Emphasis added.

[59] *Ibid.*, p. 105.

3.36 Indeed, it would appear that the emergence of European colonisation in the area had the effect of increasing these migrations. A review of the works of M. Yoshihiko reveals, for example, that:

> "as a consequence of European colonization of insular Southeast Asia, migrating activities of the Bajau became more active, in order to avoid colonization"[60].

3.37 The special case of the Balignini tribe, who were a subgroup of the Bajau Laut, is also enlightening in this regard. W.B. Pryer, in his study of "Natives of British North Borneo", remarks that these people:

> "used, as professional kidnappers, to harry the seas from Macassar, Batavia, and Singapore on the south to Manila on the north"[61].

3.38 For T. Harrisson, far from being anecdotal, the wide-spread maritime presence of the Bajau Laut, had significant consequences for the region concerned:

> "In the present writers' [sic] reading of Bornean history and prehistory, the Bajaus – using the term broadly and without pedantry – have played a key contact role in the circulation not only of the island cultures but of inter-human relations throughout the region"[62].

3.39 Although they were scattered in numerous groups, there is no doubt that the Bajau Laut constituted an important group on the eastern coast of the Semporna district, the subject of the study which Clifford Sather has devoted to them. But the legal importance of this study for the present case should not be over-estimated. As its title indicates, it relates exclusively to the Semporna region, situated in Sabah. Moreover, this is a common feature of most of the studies dedicated to this people. Professor Lapian thus observed in a recent study that during a 1995 international conference on the Sama/Bajau:

> "the area covered by the papers was more extensive than ever before. A lot of papers dealt with Sama-Bajau communities in Sulawesi and the northwestern coast of Sabah, in addition to those in Sulu and northeastern Sabah".

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[60] Lapian, A.B. and Nagatsu, K., "Research on Bajau Communities: Maritime People in Southeast Asia", *op. cit.*, p. 58 at Annex 5.

[61] Pryer, W.B., "On the Natives of British North Borneo", 16 *J. Roy. Anthrop. Inst.*, 1887, p. 230.

[62] Harrisson, T., "The Bajaus : Their Origins and Wide Importance", *Sabah Society Journal* VI (1), p. 39 at Annex 8.

He concluded from this that research on the Bajau Laut was far from exhausted, and this led him to draw up a list of new studies to be undertaken[63]. A quick review of this list is enough to show that: (i) the presence of the Bajau Laut is not confined to the eastern coast of Sabah, even if existing studies are confined to this area; (ii) there are still many grey areas in the bank of knowledge about this people, which encourages caution in the use of the available sources. T. Harrisson has furthermore criticised the "classical" studies available[64].

3.40 The above facts can only lead to the following conclusion: even if Bajau Laut tribe members from Dinawan carried out fishing, including possibly in the waters surrounding Ligitan and, perhaps, Sipadan, and collected sea turtle eggs on the latter island:

(a) they were not alone with regard to the collection of sea turtle eggs on Sipadan. This is referred to, for example, at para. 5.28 of Malaysia's Memorial[65];

(b) they were not permanently established (if at all) anywhere other than in an area clearly to the north of the disputed islands, since the southernmost limit of their settlement was the island of Dinawan. This is confirmed by Annex 88 of Malaysia's Memorial[66], in which the following description of the "Bajau country" is given:

> "The Bajau country may be said to lie within a square formed by Latitudes 4° and 5° North and Longitudes 118° and 119° East. […] the most easterly and southerly boundary of the Bajau country is the island of Danawan […]"

Indonesia certainly does not challenge the fact that Bajau Laut were present in the region. Nonetheless, neither fishing nor the collection of turtle eggs by a fiercely independent and nomadic group of people can in any way be seen as a display of territorial sovereignty[67].

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[63] Lapian, A.B., and Nagatsu, K., "Research on Bajau Communities: Maritime People in Southeast Asia", *op. cit.*, p. 59 at Annex 5.

[64] See Harrisson, T., "The Bajaus: Their Origins and Wide Importance", *Sabah Society Journal*, VI (1), in particular pp. 38-39 at Annex 8.

[65] The passage cited in this paragraph shows that other Bajau Laut than those residing on the island of Dinawan collected these eggs. See also para. 7.28, below.

[66] *British North Borneo Herald*, 2 February 1903, pp. 31-33.

[67] See paras. 7.14-7.22, below.

B. The Supposedly Exclusive Links between the Bajau Laut and the Sultan of Sulu, the BNBC and the British Administration

3.41 Notwithstanding the above analysis, which shows that the Bajau Laut were widely dispersed in the region, it is important to note that Malaysia has not established that the Bajau Laut, in their entirety, pledged allegiance to the Sultan of Sulu or to anybody else. To the contrary, it appears that they were an uncontrollable people, who maintained commercial ties not only with the Sultan of Sulu, the BNBC and the British administration in the north of Borneo but also with the Sultans of Berou and Boeloengan and the Dutch administration in the south, who collaborated with the British in a concerted effort to suppress piracy, which the Bajau had turned into a speciality of theirs.

3.42 Without venturing to say so categorically, Malaysia attempts to create an "atmospheric picture" by presenting the Bajau Laut as an ethnic group subject to the Sultan of Sulu. Thus, Malaysia states:

> **"The local leaders, who were often Sulu, were appointed by the Sultan of Sulu and given such titles as Panglima, Datu, Temengong, etc."[68];**
>
> **"This control resulted from the allegiance of the local people and the appointment of their local chiefs by the Sultan"[69];**
>
> **"The Sultan of Sulu's authority over north-eastern Borneo was recognized by other States and is evidenced" by many documents[70].**

3.43 Apart from the fact that almost all of these generalised assertions are not supported by any convincing proof, it would not seem possible to infer from them anything relating to the issue of territorial sovereignty over the specific islands now in dispute. For example, it is possible that the Sultan of Sulu had appointed at certain times (and in order for it to have any probative value, this must have occurred before 1878, or, in any event, before 1891) the leaders of certain groups of Bajau Laut. However, on the one hand, this is not attested to by

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[68] **MM, para. 3.7.**

[69] ***Ibid.*, para. 5.7.**

[70] ***Ibid.*, para. 5.8.**

any contemporaneous evidence in Malaysia's Memorial[71] and, on the other hand, there is nothing to prove that any such appointments concerned any groups settled in the immediate vicinity of Ligitan or Sipadan – the disputed islands themselves being uninhabited. In the same way, the reasoning contained in para. 5.8 of Malaysia's Memorial is too general to be relevant to the islands of Sipadan and Ligitan, all the more so since the logic used seems to be founded on a questionable *a contrario* argument.

3.44 It is all the more incongruous for Malaysia to try to establish the existence of any sort of territorial link between the Sultan of Sulu and the disputed islands via the supposed sovereignty (or suzerainty) of the Sultan over the Bajau Laut, since the latter not only travelled over extensive territories where they were scattered[72], but they were characterised by their nomadic nature and by the fact that they were resistant to any form of political or other type of control.

3.45 The term "gypsies of the seas" which is often attributed to the Bajau Laut[73] is illustrative: like the gypsies of Europe (and unlike the Bajau Darat, another branch of the Bajau), they did not settle in a well-defined territory but rather led a nomadic existence (on the seas) over vast areas which covered, as Indonesia has shown above[74], many States in the region. The result of this was that:

> "the sea nomads, distinguish themselves not by the name of a particular island group [...] but by identification with the sea itself, as 'sea people' (*a'a dilaut*). As a consequence, the nomadic Sama possessed the most readily transportable identity of all, one capable of being carried in the past virtually anywhere within the entire vast archipelagic world inhabited by the Sama-Bajau speakers"[75].

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[71] Malaysia produces some affidavits (see, for example, MM, para. 6.7) where the authors only report information as hearsay.

[72] See paras. 3.26 *et seq.*, above.

[73] Sather, C., *The Bajau Laut. Adaptation, History and Fate in a Maritime Fishing Society of South-Eastern Sabah*, *op. cit.*, p. 26, and Sopher, D., *The Sea Nomads: A Study Based on the Literature of the Maritime Boat People of Southeast Asia*, Memoir of the National Museum, No. 5, Singapore, 1965; Pelras, C., "Notes sur quelques populations aquatiques de l'Archipel Nusantarien", *Archipel*, No. 3, 1972, pp. 133-168 and Reynolds, J.K., *Towards an Account of Sulu and its Borneo Dependencies – 1700-1878*, thesis, Master of Arts (History), University of Wisconsin, 1970, pp. 76-77.

[74] Paras. 3.26-3.39, above.

[75] Sather, C., *The Bajau Laut. Adaptation, History and Fate in a Maritime Fishing Society of South-Eastern Sabah*, *op. cit.*, p. 36.

3.46 This nomadic nature of the Bajau Laut had an impact on the way in which they were perceived by other land-based peoples. Thus, the nomadic Tausug tribe of the Bajau Laut was perceived as being "disconnected" from the Sulu Sultanate:

> "Without a territorial base of their own, they were perceived by their neighbours as living outside, and so only tangentially connected to, the system of personal coalitions that came to define political and economic relations in Sulu. Reflecting this *status of social and political exclusion*, sea-nomadic communities were identified by outsiders by pejorative terms, such as *pala'au* or *luwa'an*, meaning, literally, 'that which is spat or vomited out' [[76]]"[77].

3.47 Even if the presence of nomads over a territorial area has, without doubt, certain legal effects and excludes the possibility of the territory in question being considered *terra nullius*[78], such a situation does not lend itself to the establishment of a territorial title. In reality, the situation bears similarities to some aspects of the *Western Sahara* case that the Court took an interest in: there may have been ties of alliance between the Sultan of Sulu and some, but only some, Bajau Laut groups[79] (even though Malaysia's Memorial does not establish this); these ties, which are of a personal nature, are not sufficient in any event to establish territorial sovereignty in the sense in which the expression is understood in contemporary international law[80].

3.48 Further, as the Arbitral Tribunal noted in the first stage of the *Eritrea/ Yemen* case:

> "There can be no doubt that the concept of historical title has special resonance in situations that may exist even in the contemporary world, such as determining the sovereignty over nomadic lands occupied during time immemorial by given tribes who owed their allegiance to the ruler who extended his socio-political power over that geographic area. A different situation exists with regard to uninhabited islands which are not claimed to be falling within the limits of historic waters"[81].

3.49 Furthermore, and here too, the similarities with the *Western Sahara* case are striking. each Bajau Laut group was highly autonomous. As Clifford Sather observed:

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[76] Keifer, T.M., "The Tausug Polity and Sultanate of Sulu: A Segmentary State in the Southern Philippines", *Sulu Studies*, No. 1, 1972, p. 22; Sather, C., "Sea and Shore People: Ethnicity and Ethnic Interaction in Southeastern Sabah", *Contributions to Southeast Asian Ethnography*, 1984, pp. 12-13.

[77] Sather, C., *The Bajau Laut. Adaptation, History and Fate in a Maritime Fishing Society of South-Eastern Sabah*, *op. cit.*, p. 16. Emphasis added.

[78] *Western Sahara*, Advisory Opinion, *I.C.J. Reports 1975*, p. 12 at p. 39, para. 81.

[79] *Ibid.*, at p. 49, para. 107 and p. 57, para. 129.

[80] See IM, paras. 4.3-4.18.

[81] Award of 9 October 1998, *Territorial Sovereignty and Scope of the Dispute*, p. 35 at p. 123.

> "Bajau society [was] geographically dispersed [and] highly fragmented, being divided into a multitude of distinct subgroups, all locally named and most geographically interspersed with one another and with non-Sama-speaking peoples as well [...] within the entire vast archipelagic world inhabited by Sama-Bajau speakers"[82].

3.50 The same is true in respect of the Bajau Laut of Semporna:

> "The Bajau population of Semporna, as of the Sulu Archipelago beyond, is fragmented into a number of named subgroups, each associated with a particular island homeland, place of origin, or area of local settlement"[83].

3.51 The logical and inevitable consequence of this fragmentation was the absence of any political unity over the Bajau Laut, as Clifford Sather emphasises:

> "The Bajau have *never constituted a unified political entity* however, and prior to European penetration local communities in Sabah and the southern Philippines were under the *tenuous* jurisdiction of the Sulu Sultanate, and in eastern Indonesia, Buginese, Makassarese, and lesser political units, most of them dominated by non-Bajau rulers or their local political agents"[84].

3.52 This does not exclude the formation of certain groupings, but they cannot be described as "political". Clifford Sather notes in effect that:

> "Both at sea and in his home village, the Bajau Laut faces choice in his permanent group affiliations and in forming more ephemeral associations among his kindred or those related by local ties or convergent interests"[85].

3.53 Without doubt there probably existed links – primarily of a linguistic nature[86] – between the different Bajau Laut populations, between the Bajau and the local land-based populations, and between the Bajau and the authorities upon whom they were on occasion dependent. There is no doubt, for example, that in a territory under the Sulu Sultanate's authority the Bajau Laut maintained relations with the Sultan of Sulu, which could, in certain cases, be relatively close, and even include allegiance. For example, it would not have been unusual for the Sultan of Sulu to have appointed Bajau chiefs on the island of Dinawan, an island which was situated on the periphery of the Sulu empire[87] – however, Malaysia provides no concrete evidence that this was the case.

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[82] Sather, C., *The Bajau Laut. Adaptation, History and Fate in a Maritime Fishing Society of South-Eastern Sabah*, *op. cit.*, p. 36.

[83] *Ibid.*, p. 30.

[84] Sather, C., "The Bajau Laut", in V.T. King (ed.), *World Within: The Ethnic Groups of Borneo*, pp. 222-223 at Annex 9. Emphasis added.

[85] *Ibid.*, p. 244.

[86] See Sather, C, *The Bajau Laut. Adaptation, History and Fate in a Maritime Fishing Society of South-Eastern Sabah*, *op. cit.*, pp. 8-12.

3.54 Similarly, there is nothing surprising about the fact that in the Explanatory Memorandum to the Dutch Parliament which accompanied the 1891 Convention, the ministers in question pointed out that:

> "the Badjans [Bajau], who live on the islands off the north-east coast of Borneo, which belong to the Sultanate of Sulu, still regularly gather forest produce in the disputed area without taking the least notice of the Sultan of Bulungan"[88].

Contrary to Malaysia's interpretation of this Memorandum[89], which does not specify which islands are referred to, there is no basis for the assertion that *all* the islands where the Bajau Laut had settlements were included within the Sultan of Sulu's possessions.

3.55 In fact, the truth is that only *when* the islands in question belonged to the Sultan of Sulu did the Bajau consider themselves linked to him, which is quite a different matter. The point being made in the Explanatory Memorandum is precisely that the Bajau linked to the Sultan of Sulu ignored – as was typical of Bajau behaviour generally – the rights of the Sultan of Boeloengan on the parts of the mainland belonging to him: those rights nevertheless existed, as was implicitly accepted by the recognition of Boeloengan transitional rights to collect jungle produce in Article VII of the 1891 Convention. Moreover, in this respect, the Memorandum specifies that, generally speaking, it is dealing with the border zone between Boeloengan and Sulu, where the boundary was uncertain:

> "In view of both this fact and the absence of any document concerning the delineation of the boundary between the Sultanates of Bulungan and Sulu, it was considered very difficult to determine the precise extent of the domain of the Bulungan"[90].

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[87] Clifford Sather states that, "the Semporna district", which the island of Dinawan is part of, is seen as "lying at the periphery of the Sulu zone", *The Bajau Laut. Adaptation, History and Fate in a Maritime Fishing Society of South-Eastern Sabah*, op. cit., p. 39.

[88] IM, Annex 77, Vol. 3.

[89] See MM, para. 5.8(c), see also para. 9.11.

[90] IM, Annex 77, Vol. 3.

Nor did the Dutch administration know the exact extent of Boeloengan[91], which, it must be stressed again, is no surprise since, as recalled in a recent study:

> "The idea of detailed spatial delimitation by way of boundaries being unfamiliar in the relations between the regional kingdoms and principalities of the time, it was unavoidable and understandable that competing claims to authority (or, for that matter, "sovereignty" or "ownership") over large tracts of land and their sparse population were not uncommon and persistent"[92].

3.56 Moreover, as shown on Map 3.1 reproduced on the following page, far from being confined to the islands and coasts controlled by the Sultan of Sulu, the Bajau Laut are dispersed over a vast area including the entire east coast of Borneo, the whole island of Sulawesi, the coasts of Komodo and Flores down to Roti. Regardless of the extent of Malaysia's view of the Sultanate of Sulu, there cannot be the slightest doubt that it did not exercise any kind of authority over those areas which are recognised as being under the exclusive sovereignty of Indonesia. Indeed, this map shows the actual settlements of Bajau Laut. Moreover, toponym Map 3.2 reproduced following Map 3.1 shows a great number of places, the names of which include the term "bajau" or "bajo", and reveals that these settlements existed in a remote past.

3.57 This confirms the fact that, like the ties that united the nomadic tribes of Bilad Chinguiti and those of Western Sahara before the colonisation of this territory by Spain, these "were ties which knew no frontier between the territories and were vital to the very maintenance of life in the region"[93]. But such ties most certainly do not suffice to establish the existence of "any tie of territorial sovereignty"[94] between the territories in which the Bajau Laut were nomads and the Sultanate of Sulu.

3.58 To the contrary, the Bajau Laut were resistant to authority in all its forms, and this represented another one of their characteristics. Thus, I. Black writes:

> "The blue-green waters of the [Darvel] bay were dotted with innumerable islands, and a loose chain of islands connected south-eastern Sabah with Sulu,

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[91] *Ibid.*, paras. 4.55, *et seq.*

[92] Ko Swan Sik, "Asian Territorial Disputes, with Special Reference to the Islands of Sipadan and Ligitan: Succession to Dutch and British Titles?" in T.D. Gill and W.P. Heere (ed.), *Reflections on Principles and Practice of International Law – Essays in Honour of Leo J. Bouchez*, Nijhoff, The Hague, Boston, London, 2000, p. 116.

[93] *Western Sahara, Advisory Opinion, I.C.J. Reports, 1975*, p. 12 at p. 65, para. 152; see also pp. 66-67, paras. 158-159.

[94] *Ibid.*, p. 68 at para. 162.

> making quite artificial any political boundaries established by the Company or by the Spanish and the Dutch. Here, the Bajau peoples remained elusive and reluctant to accept any permanent subjection to the Company" (in the 1880s)[95].

The author concludes that the Bajau Laut:

> "do appear to have shared a characteristically limited sense of community and loose political leadership"[96].

3.59 Indeed, the Bajau Laut were described in the *Handbook of British North Borneo*, 1886, as "a tribe the most difficult to manage in the territory"[97].

3.60 Leigh R. Wright has interpreted this situation as meaning that the Bajau Laut were exercising *de facto* control over the concerned territories:

> "Although recognized as sovereign over the Sulu Archipelago it is not at all certain that the Sulu Sultans held sovereignty over any part of North Borneo. What is clear is that they never held *de facto* control there. Until 1878 power along the coast of Northeast Borneo was in the hands of rapacious pirates, mainly the Illanun and Balagnini but including some Sulus"[98].

As Leigh R. Wright puts it:

> "It is certain that the local chiefs considered themselves independent of Sulu and acted accordingly [[99]] just as the chiefs along the northwest coast considered themselves independent of Brunei [...] that chaotic conditions along the coasts and the weakness of Brunei and Sulu prevented either state from maintaining control over the area; that pirates were the only effective power over large areas of North Borneo [...]"[100].

3.61 This resistance to political integration appears to form the very nature of the Bajau Laut, resulting particularly from their nomadic life. According to J. F. Warren, for example:

> "The Samal Bajau Laut possessed neither a territorial base nor the internal political structure necessary to weld localised kindred groups into viable political communities [...]. The maritime nomadic fishermen had limited

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[95] Black, I., *A Gambling Style of Government. The Establishment of the Chartered Company's Rule in Sabah, 1878-1915*, Oxford University Press, 1983, p. 66.

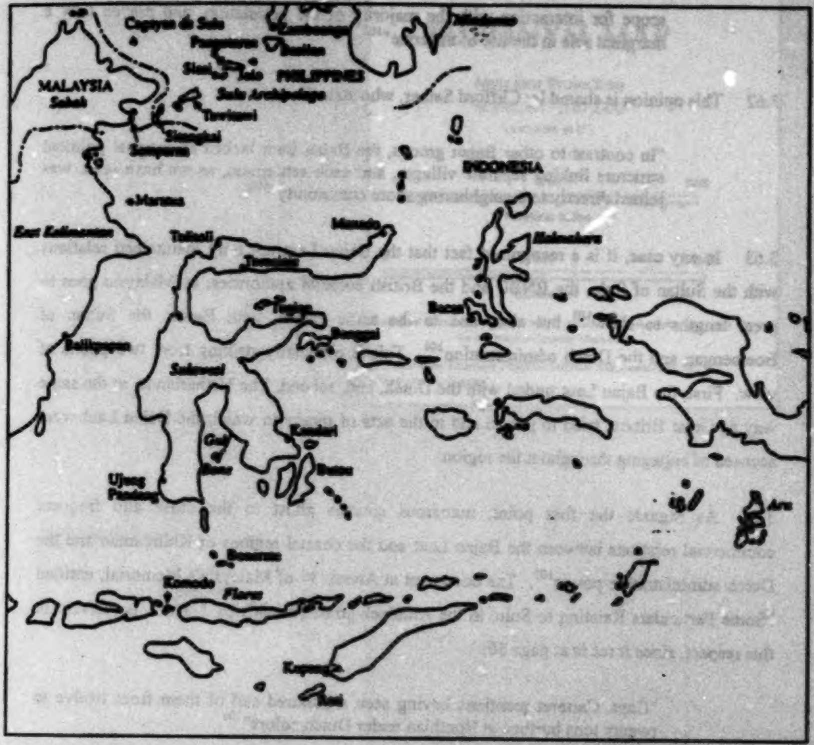
[96] *Ibid.*, pp. 21-22.

[97] *Handbook of British North Borneo*, London, William Clowes & Sons Limited, 1886, p. 21 at Annex 10.

[98] Wright, L.R., "Historical Notes on the North Borneo Dispute", *Journal of Asia Studies*, Vol. xxv, No. 3, May 1966, p. 471, see also pp. 480-481.

[99] Treacher, W.H., "British Borneo", in *JRASSB*, No. 21, June 1890, pp. 48-55 at Annex 11.

[100] Wright, L.R., *op. cit.*, p. 481.


Cagayan de Sulu
Zamboanga
Mindanao
Pangutaran
Basilan
Siasi
Jolo
PHILIPPINES
MALAYSIA
Sabah
Sulu Archipelago
Tawitawi
Sitangkai
Semporna
INDONESIA
Maratua
East Kalimantan
Tolitoli
Manado
Halmahera
Tomini
Togian
Bacan
Banggai
Balikpapan
Sulawesi
Kendari
Gulf of Bone
Buton
Ujung Pandang
Aru
Bonerate
Komodo
Flores
Kupang
Roti

Map 1. Sama-Bajau Settlements Reported in Fox 1984

Map 2.1

Lapian, A.B. and Nagatsu, K., "Research on Bajau Communities: Maritime People in Southeast Asia", reprinted from *Asian Research Trends: A Humanities and Social Science Review*, N°6, 1996, p. 47.

scope for interaction with the majority of the population, and played only a marginal role in the life of the zone"[101].

3.62 This opinion is shared by Clifford Sather, who states:

> "In contrast to other Bajau groups, the Bajau Laut lacked an internal political structure linking separate villages, and each settlement, as we have seen, was joined directly to a neighboring shore community"[102].

3.63 In any case, it is a recognised fact that the Bajau Laut not only maintained relations with the Sultan of Sulu, the BNBC and the British colonial authorities, as Malaysia goes to great lengths to show[103] but also, and to the same extent, with Berou, the Sultan of Boeloengan and the Dutch administration[104]. This is especially striking from two points of view. First, the Bajau Laut traded with the Dutch, and, second, The Netherlands, in the same way as Great Britain, tried to put an end to the acts of piracy in which the Bajau Laut were accused of engaging throughout the region.

3.64 As regards the first point, numerous sources attest to the close and frequent commercial relations between the Bajau Laut and the coastal regions of Kalimantan and the Dutch administrative power[105]. The document at Annex 34 of Malaysia's Memorial, entitled "Some Particulars Relating to Sulu, in the Archipelago of Felicia", by J. Hunt, is relevant in this respect, since it reads at page 50:

> "Capt. Carteret mentions having seen a hundred sail of them from twelve to twenty tons burthen at Bonthian under Dutch colors"[106].

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[101] Warren, J.F., *The Sulu Zone 1768-1898*, *op. cit.*, pp. 68-69.

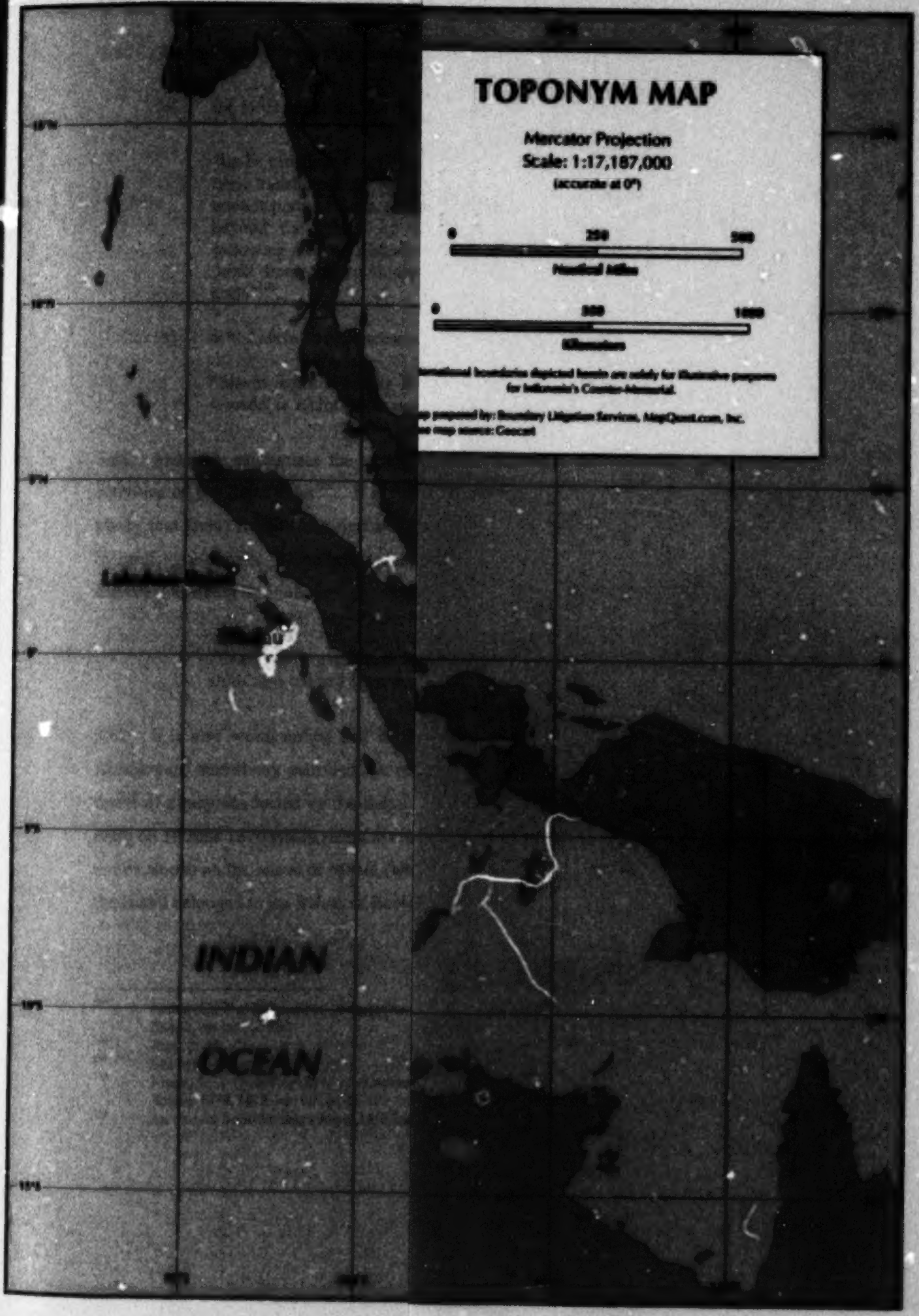
[102] Sather, C., "Sulu's Political Jurisdiction over the Bajau Laut", in Sather, C., (ed.), "Traditional States of Borneo and the Southern Philippines", *op. cit.*, p. 61.

[103] See MM, paras. *6.5, et seq.*

[104] The same applies in particular to the "Dinawan community" which Clifford Sather describes (see para. 3.40, above). Without dwelling on it, the author points out: "In the early nineteenth century, leaders of the Dinawan community are said to have [this expression shows, at the very least, much caution on the part of this undisputed specialist of the region] held a concession grant from the Sultan of Sulu giving them exclusive rights to collect and trade in sea-turtle eggs from nearby Sipadan Island": but he adds immediately: "In addition to Sulu, its leadership maintained political connections with Bulungan", *The Bajau Laut. Adaptation, History and Fate in Maritime Fishing Society of South-Eastern Sabah*, *op. cit.*, p. 29.

[105] Given the indomitable character of the Bajau Laut (see paras. 3.58 *et seq.*, above), these "close and frequent relations" sometimes degenerated in acts of hostility against the Dutch. See, for example, the examples of abductions of Dutch subjects mentioned by W.H. Treacher in "British Borneo: Sketches of Brunai, Sarawak, Labuan and North Borneo", *op. cit.*, p. 100 at Annex 11.

[106] MM, Annex 34, Vol. 3.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rnational boundaries depicted herein are solely for illustrative purposes
for Indonesia's Counter-Memorial.
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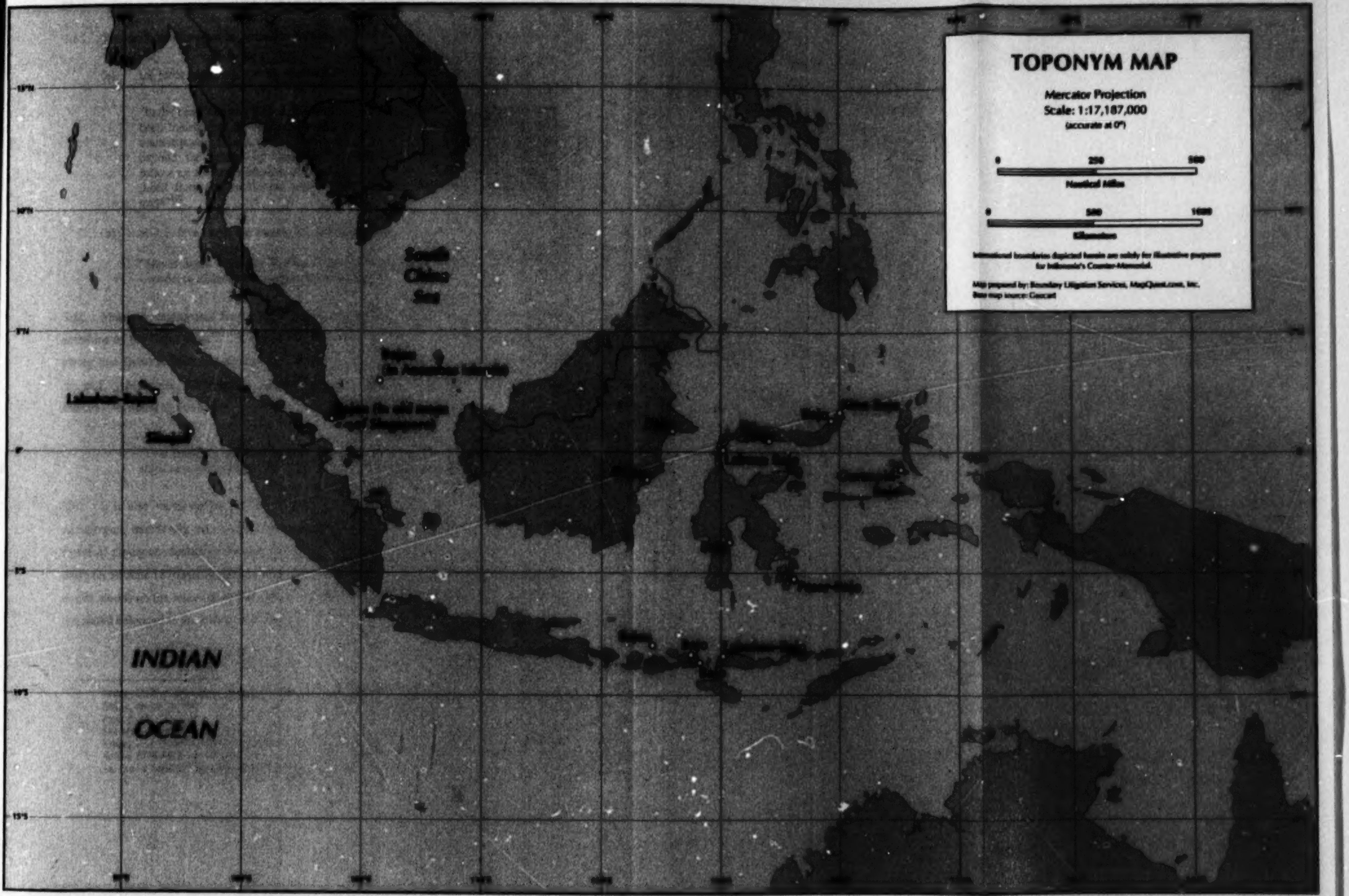
Map 3.2



South
China
Sea
INDIAN
OCEAN

TOPONYM MAP

Mercator Projection
Scale: 1:17,187,000
(accurate at 0°)

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Kilometers

International boundaries depicted herein are solely for illustrative purposes for Indonesia's Counter-Memorial.

Map prepared by: Boundary Litigation Services, MapQuest.com, Inc.
Base map source: Geocart

Map 3.2

3.65 This trade was directed in particular towards:

(a) the birds nests; it is for this reason that Clifford Sather remarks that:

> "In the pre-Company period, the majority [of edible birds' nests] appear to have been transhipped by way of Omadal Island to Maimbung and Jolo, the chief market ports of Sulu, and to Bulungan and Berau in East Kalimantan. Being beyond the sphere of Company control, the Semporna district became, following the establishment of Sandakan, a refuge for those who continued to profit from this traditional procurement economy, including the birds' nest trade"[107]

(b) or the slave trade; once again according to Clifford Sather:

> "Slaves were a major trading commodity and moved from Sulu through Omadal to Bulungan in eastern Kalimantan"[108].

3.66 Malaysia emphasises the struggle led by the British authorities against the pirate activities of the Bajau Laut[109]. It is difficult to deduce from these attempts at suppressing piracy that Great Britain duly derived an alleged legal title over the islands which are now claimed by Malaysia. Nonetheless, the British did not have a monopoly over this policing activity. As noted by I. Black:

> "Two British naval vessels had appeared in the Sulu Sea in April 1879, Dutch ships also cruised the area, and later in the year Spanish warships arrived"[110].

3.67 It is also worth noting that in 1875-1877 a Dutch warship, HNLMS *Admiraal van Kinsbergen*, intensively patrolled the coast of the Sultanate of Boeloengan because of the threat of piracy conducted by the Bajau Laut in the region. The ship's log book contains an entry on 10 June 1876 which refers to cruising around the island of Sipadan, and even landing armed sloops on the island of Mabul (which shows that at the time the Dutch considered that the island belonged to the Sultan of Boeloengan)[111].

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[107] Sather, C., *The Bajau Laut. Adaptation, History and Fate in Maritime Fishing Society of South-Eastern Sabah*, *op. cit.*, p. 50.

[108] *Ibid.*, p. 45.

[109] See MM, paras. 6.5-6.6.

[110] Black, I., *A Gambling Style of Government. The Establishment of the Chartered Company's Rule in Sabah, 1878-1915*, *op. cit.*, p. 23.

[111] An extract from the ship's log book is included in Annex 12.

3.68 The presence of Dutch ships, even north of the 4°10' N parallel, is confirmed by the *Handbook of British North Borneo* of 1886, where it is noted, for example, that :

> **"the Company, on the 7th September, 1883, hoisted their flag on the south bank of the Sibuku, while the Dutch have erected an obelisk on Batu Tinagat, and keep a gunboat stationed at the Tawas river"[112].**

The Handbook specifies that :

> **"Between Batu Tinagat and the Sibuku River, the southern boundary of British North Borneo, is an extensive bay recently surveyed by the Dutch. [...] The Dutch have a gunboat stationed at the Tawao River, but there are no villages to be met with, nor even boats, save occasionally some wandering Bajows engaged in the bêche-de-mer fishery, which is capable of great development, and only awaits the settlement of the boundary dispute with Holland [...]"[113].**

This was also confirmed by W.H. Treacher:

> **"in September, 1883, in order to practically assert the Company's claims, I, as their Governor, had a very pleasant trip in a very small steam launch and steaming at full speed past two Dutch gun-boats at anchor, landed at the South bank of the Sibuko, temporarily hoisted the North Borneo flag, fired a *feu-de-joie*, blazed a tree, and returning, exchanged visits with the Dutch gun-boats, and entertained the Dutch Controlleur at dinner. Having carefully given the Commander of one of the gun-boats the exact bearings of the blazed tree, he proceeded in hot haste to the spot, and, I believe, exterminated the said tree. The Dutch Government complained of our violated Netherlands territory, and matters then resumed their usual course, the Dutch station at Batu Tinagat, or rather at the Tawas River, being maintained unto this day"[114].**

3.69 Similarly, Clifford Sather refers to a report written by a BNBC official who visited Semporna with Pryer in which he noted that the inhabitants:

> **"complained of being hunted down by the Dutch vessels of war, as pirates, although they say they have never been guilty of piracy"[115].**

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[112] ***Handbook of British North Borneo*, London, William Clowes & Sons Limited, 1886, p. 20 at Annex 10.**

[113] ***Ibid.*, p. 29.**

[114] **Treacher, W.H., "British Borneo: Sketches of Brunai, Sarawak, Labuan and North Borneo", *op. cit.*, p. 54 at Annex 11.**

[115] **Sather, C., *The Bajau Laut. Adaptation, History and Fate in a Maritime Fishing Society of South-Eastern Sabah*, *op. cit.*, p. 51.**

3.70 The HNLMS *Lynx* incident, equally attests to the control exercised by the Dutch over acts of piracy committed by the Bajau Laut after 1891, depending on which side of the 4° 10' N parallel they occurred[116].

3.71 There is one particular incident in which pirates were pursued by both the Dutch and the British authorities acting together which is of special interest. This incident was summarised as follows in the *British North Borneo Herald* of 1 May 1892:

> "The Government Cruiser Petrel was despatched to Siiam on the 7th April to capture or punish some people who had raided Tambak [...]. They were traced to Dinawan and as they could not be found [...]. The main body have been traced to Dutch territory and we are informed that an application for their rendition is being made"[117].

This incident proves the existence of a sort of task-sharing between the British and the Dutch with regard to the suppression of piracy following very precise maritime limits. Moreover, according to a note from the *British North Borneo Herald* in January 1895, the Governor of British North Borneo had suggested to the Governor-General of Netherlands India the "taking of joint measures against piracy in the waters under their respective jurisdictions in North Borneo"[118].

3.72 The relations between the Bajau Laut and the Dutch colonial administration were not only limited to the suppression by the latter of the acts of piracy of the former; certain examples reveal the age-old submission of the Bajau Laut to the Dutch Authorities. Thus, the German ethnographer von Dewall mentions in a 1855 report that each family of certain Bajau Laut living on the south-west side of the island of Pulau Panjang:

> "provided the Sultan of Gunong Tebur with an annual tribute of 12 *kotis* of *tripang* and 100 dried fish, for which they received in return cloth and agricultural produce. They bartered for rice in Berau. The Bajau also trade with the people of Berau and Kutai, and with the inhabitants of the west coast

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[116] See IM, Chapter VI, Section 1.

[117] MM, Annex 83, Vol. 4.

[118] Annex 13. It may also be noted that other incidents confirm the Dutch claims north of the Sibuko river before 1891: see, for example, the letter from Sir Alcock to Earl Granville, dated 20 December 1883, at Annex 14 concerning an incident in 1883 and the letter from W.B. Pryer to the Captain of the Netherlands vessel *Atjeh*, dated 4 July 1880, at Annex 15, concerning a similar incident in 1880. See also Annex 16 which reproduces the *Estimates for Netherlands India for the Financial Year 1880*, which includes provision for a cruiser to stand watch over a Netherlands flag hoisted at the mouth of the Tawau River.

> of Sulawesi, who come to Pulau Panjang to collect sea products from the area. In earlier times, boats from Sulu came to Pulau Panjang to fight over these products. Also pirates from Balangingi (*zeeschuimers van Blahnjiehnjeh*) who harried the Bajaus, so that they moved away to Tondoni and Toli-Toli, on the coast of Sulawesi, up until last year [1848], when they returned again to Pulau Panjang. Here they have not been disturbed since then. They fly a Dutch flag to show that they have surrendered to the 'Company' and the *panggawa* [*penggawa*] has an open letter from the king of Gowa, which he used as a kind of passport or recommendation. About twenty Bajau families also live in the islands to the south of the Kuran river (under Tanjung); their leaders are Sri-Bangsawan and Pakassah"[119].

3.73 The global picture which emerges from this account of the facts is the following: the Bajau Laut, also known as the "sea gypsies" (their life-style has largely remained unchanged up to the present day), never, as a whole, pledged allegiance to a specific political power. Deprived of a fixed territorial base, they scoured the seas of the region, and the commercial or other links which they maintained with the territorial sovereigns were dictated by expediency and did not imply the existence of any "tie of territorial sovereignty" in the words used by the Court in the *Western Sahara* case[120]. *A fortiori*, one cannot deduce from these ties the existence of any territorial title belonging to the Sultan of Sulu over the territories over which the Bajau Laut were nomads, be that over Pulau Ligitan, Pulau Sipadan or elsewhere.

Section 3. Conclusion: The Absence of Malaysian "Original" Title

3.74 Indonesia has considered it important to reply in fairly detailed manner to Malaysia's claims concerning the original territorial status of the disputed islands as this issue is of significance in discussing the two "strands" forming part of Malaysia's submissions. On the one hand, Malaysia, not having established that Ligitan and Sipadan were possessions of the Sultan of Sulu, cannot consequently claim that it "inherited" the islands via one or other of the chains of alleged title. On the other hand, in the absence of any original title, the alleged acts of administration in which Malaysia prides itself are insufficient to establish its sovereignty over the islands in question as they do not fulfil the criteria necessary to establish a transfer of sovereignty.

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[119] Sather, C., *The Bajau Laut. Adaptation, History and Fate in a Maritime Fishing Society of South-Eastern Sabah*, *op. cit.*, pp. 29-30, in which he translates H. von Dewall, "*Aanteekeningen Omtrent de Noordoostkust van Borneo*" ("*Notes concerning the north-east coast of Borneo*"), in *Tijdschrift voor Indische Taal-, Land- en Volkenkunde, Deel IV*, 1855.

[120] See para. 3.57, above.

3.75 In essence, Malaysia's first claim consists in arguing that "title to the islands was acquired by grant of the previous sovereign" (which is supposed to have originated in the Sultan of Sulu - which as Indonesia has shown was not the case)[121]. This first claim is itself split into two distinct strands. On the one hand, Malaysia argues that it inherited its territorial title through the BNBC and then Great Britain; on the other hand, Malaysia also contends that it inherited its title via Spain, the United States and finally by Great Britain through the 1930 Treaty between Great Britain and the United States. Indonesia has shown at para. 3.5 that these two claims are fundamentally incompatible and that they cannot be presented simultaneously.

3.76 In truth, both claims are vitiated by a fundamental flaw: from the moment that Malaysia fails to establish that the Sultan of Sulu held territorial title over Ligitan and Sipadan - a title which the current pretender to the Sultanate of Sulu also formally denies the existence of[122] - title could not have been passed on to Malaysia by any means: *nemo plus juris transferre potest quam habet*[123].

3.77 As Max Huber, the arbitrator in the *Island of Palmas* case, clearly explained:

> "Titles of acquisition of territorial sovereignty in present-day international law [...] like cession, presuppose that the ceding and the cessionary Powers or at least one of them, have the faculty of effectively disposing of the ceding territory"[124].

3.78 Huber's Award continued:

> "The title alleged by the United States of America as constituting the immediate foundation of its claim is that of cession, brought about by the Treaty of Paris, which cession transferred all rights of sovereignty which Spain may have possessed in the region indicated in Article III of the said Treaty and

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[121] See MM, para. 5.1.

[122] See para. 3.19, above.

[123] This maxim is considered to be a general legal principle in accordance with Article 38, paragraph 1(c) of the Statute of the International Court of Justice and has been largely supported in authoritative/academic works (see, for example, Sir Robert Jennings and Sir Arthur Watts, *Oppenheim's International Law*, 9th ed., Longman, London, Vol. I, p. 682; Malcolm Shaw (citing the 1928 Award), *International Law*, 4th ed., 1997, p. 339; see also the commentary by the ILC of draft Article 11 on Succession of States in Respect of Treaties, *ILC Yearbook*, 1974, Vol. II, p. 210.

[124] Award of 4 April 1926, *RIAA*, Vol. II, p. 829 at p. 839.

therefore also those concerning the Island of Palmas (or Miangas). It is evident that Spain could not transfer more rights than she herself possessed"[125].

"The claim of the United States to sovereignty over the Island of Palmas (or Miangas) is derived from Spain by way of cession under the Treaty of Paris. The latter Treaty, though it comprises the island in dispute within the limits of cession, and in spite of the absence of any reserves or protest by the Netherlands as to these limits, has not created in favour of the United States any title of sovereignty such as was not already vested in Spain"[126].

3.79 The same situation exists in the present case. In other words:

(a) the Sultan of Sulu could not transfer more rights than he himself possessed, be that through the cession granted to the BNBC or through the 1878 Treaty with Spain;

(b) this is all the more true given that, contrary to the facts in the *Island of Palmas* case, neither the cession nor the Treaty with Spain comprised the islands in dispute within their geographic sphere. Indeed the first instrument expressly excluded them as the limit stipulated was nine nautical miles from the coast[127], which confirms the declaration of the current pretender to the throne of Sulu;

(c) the above remains true, in spite of the absence of any reserves or protests by The Netherlands, as there is no evidence that the Dutch were made aware of the cession at the time of its conclusion;

(d) in any case, the Dutch Government had no reason to protest against a cession which did not bear on the islands in dispute.

3.80 The Sultan of Sulu therefore could not have ceded any sovereign title to islands over which he did not exercise any exclusive sovereignty, either to the future BNBC (who received their grant from Messrs. Dent and Overbeck), or to Spain.

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[125] *Ibid.*, p. 842.
[126] *Ibid.*, p. 866.
[127] See MM, Annex 9, Vol. 2.

3.81 Malaysia's entire case rests on the assumption that the Sultan of Sulu had a title over the islands in dispute before the colonisation by Great Britain. This assumption is clearly erroneous. Not only has Indonesia shown that the Sultan of Sulu's possessions did not extend to the islands of Sipadan and Ligitan, but there is a strong presumption in support of Indonesia's argument that the Sultan of Boeloengan[128] possessed exclusive territorial title over the islands[129] as shown, in particular, by the 1850 and 1878 Contracts of Vassalage[130], even though the picture is not entirely clear.

3.82 This situation is not particularly surprising, given the significant uncertainties prevalent at the time in this part of the world over the exact extent of the respective territories of different local rulers, whose notions regarding territorial ties did not reflect modern accepted norms of international law, as Indonesia has explained in its Memorial[131].

3.83 It was precisely the border area between Boeloengan and Sulu that was the subject of the territorial dispute between Great Britain and The Netherlands prior to the conclusion of the 1891 Convention. The exact geographical extent of the domains of these two Sultans in north-eastern Borneo was very difficult to establish in practice, and this was reflected in the negotiations between Great Britain and The Netherlands leading to the 1891 Convention[132]. It is important to recall that the 1891 Convention was entered into in order to resolve these uncertainties, as is clear from the Dutch Explanatory Memorandum[133], which is quoted twice by Malaysia[134]. This document also establishes the importance the negotiators placed on determining the two States' respective possessions over the neighbouring islands.

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[128] It must be noted that Malaysia is clearly wrong to assert that in the early part of the 19th century, the southern part of the east coast of Borneo was subject to the Sultan of Boeloengan (MM, para. 7.2): that area was, at the time, subject to the Sultan of Bandjermasin (see IM, paras. 4.55 *et seq.*); it was the central and northern part of the east coast of Borneo that belonged to the Sultan of Boeloengan.

[129] See IM, paras. 4.55, *et seq.*

[130] IM, Annexes 13 and 19. See IM, paras. 4.66-4.71. It is to be noted that Malaysia contradicts itself when it states (at para. 7.5) that the Contract of Vassalage of 1878 provided for the first time that the territory of the Sultan of Boeloengan extended in the north-east up to Batoe Tinagat, while, at para. 7.3 it acknowledges that the limits of the Sultan's territory as defined in the 1850 Contract were fixed at Batoe Tinagat.

[131] See IM, Chapter IV, Section 2.

[132] Even though Boeloengan was not (and could not have been) concerned, it has to be recalled that, in addition, further confirmations of the extent of the domain of the Sultan of Sulu depend on the definition of the limits of the Spanish and US possessions in the region (see Chapter VI, below).

[133] See para. 3.55, above.

[134] See fn. 90, above.

3.84 Indonesia has clearly established the following in its Memorial[135]: the 1891 Convention, by its object and purpose, its terms, and its context – in particular as confirmed by the Dutch Explanatory Memorandum Map which was immediately communicated to Great Britain – established the 4° 10' N parallel of latitude as the dividing line between the respective possessions of the Parties in the area. As a result of this, the situation was considerably simplified.

3.85 From this point onwards, and whatever the previous uncertainties may have been regarding the respective limits of the local Sultans' territories, the boundary between The Netherlands, on the one hand and Great Britain on the other, was no longer a contentious issue. Just as was the case in the case concerning the *Territorial Dispute* between Chad and Libya, where the Court did not deem it relevant to examine "the history of the 'Borderlands' claimed by Libya on the basis of title inherited from the indigenous people"[136] because of the existence of an international convention resolving the matter (the 1955 Treaty between Libya and France), so also in this case is the Court not required to settle the question of whether the Sultan of Sulu or the Sultan of Boeloengan held territorial sovereignty over the disputed islands because of the existence of the 1891 Convention. As the Arbitral Tribunal noted in the *Rann of Kutch* case with respect to the argument put forward by Pakistan regarding the principle of reversion to the pre-colonial situation:

> "While the principle of which it is an illustration is of interest, application of such a principle would be difficult and would introduce an element of instability in the relationship between nations which for a long time have been under foreign domination"[137].

3.86 Whatever may have been the pre-1891 situation, the agreement between the two colonial powers "logically and legally adversely affects any pre-existing title"[138]. As Indonesia will again demonstrate in Chapter V, the 1891 Convention constitutes the indisputable title[139] which confirmed Dutch sovereignty over the islands of Ligitan and Sipadan, both of which are situated to the south of the 4° 10' N parallel.

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[135] See IM, Chapter V.

[136] *Territorial Dispute (Libyan Arab Jamahiriya / Chad), Judgment, I.C.J. Reports 1994, 3 February 1994*, p. 6 at p. 38, para. 75.

[137] *Indo-Pakistan Western Boundary (Rann of Kutch) Case (India v. Pakistan), ILR*, Vol. 50, p. 471. See also Brownlie, I., *Principles of Public International Law*, Oxford, Clarendon Press, 5th ed., 1998, p. 671.

[138] Award of 9 October 1998, *Eritrea/Yemen, Territorial Sovereignty and Scope of the Dispute*, p. 35 at para. 124.

3.87 This colonial title being firmly established, it could only be overcome by another superior title. However, Malaysia has failed to demonstrate that the so-called effective acts of administration, in which it prides itself, are sufficient to displace Dutch sovereignty over the islands in question as they do not fulfil the criteria necessary to produce a transfer of sovereignty from the true title-holder. Indonesia will return to this aspect of the case in Chapter VII.

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[139] In accordance with the well known definition proposed by Sir Robert Jennings, a title "is the vestitive facts which the law recognizes as creating a right" *The Acquisition of Territory in International Law*, Manchester UP, 1963, p. 4.

CHAPTER IV

THE ABSENCE OF TITLE OVER THE ISLANDS VESTING IN THE BNBC OR BRITISH NORTH BORNEO

Section 1. Introduction

4.1 As previously noted[1], Malaysia's claimed roots of title over Ligitan and Sipadan are based on a confused and inherently contradictory series of propositions. In Chapter III, Indonesia demonstrated how the premise underlying both of Malaysia's claimed chains of title – that sovereignty over the islands originally vested in the Sultan of Sulu – is totally unsupported. Notwithstanding this fundamental flaw in its case, Malaysia asserts at the very outset of its Memorial that its predecessors in title were, from 1878 (at the time of the grant from the Sultan of Sulu to Messrs. Dent and Overbeck), the BNBC and then Great Britain itself after it changed the status of North Borneo from a protectorate to a colony in 1946[2]. In the same breath, Malaysia also contends that its chain of title was passed from the Sultan of Sulu not to the BNBC, but rather to Spain, then to the United States under the 1898 and 1900 Conventions, then to Great Britain by virtue of the 1930 Anglo-U.S. Treaty.

4.2 The Court will appreciate that these two alleged chains of title are fundamentally incompatible. While each originates with the Sultan of Sulu, who is said to have held an original title to the islands[3], Malaysia argues that the Sultan effectively ceded the islands both to the BNBC and to Spain. Obviously, both chains cannot be correct. The BNBC and Spain (subsequently the United States from 1900 to 1930) could not have possessed sovereignty over the islands simultaneously. At least one of Malaysia's strands must, therefore, be incorrect.

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[1] Para. 3.3, above.
[2] MM, para. 2.1.
[3] *Ibid.*, paras. 5.3-5.8.

4.3 But the fact that one of these chains must, by Malaysia's own reasoning, be wrong, does not mean that the other chain is somehow validated. In this chapter, Indonesia will show that none of the international instruments on which Malaysia relies to establish its title provides any support for the BNBC and subsequently Great Britain having a valid claim of sovereignty over the islands during the relevant period prior to Malaysia's independence. In Chapter VI, Indonesia will demonstrate that the second chain of title also does not stand up to scrutiny and that neither Spain nor the United States ever enjoyed sovereign title over the disputed islands which could have subsequently been passed on to Great Britain under the 1930 Convention.

Section 2. The Absence of Title Vesting in the BNBC and British North Borneo

A. The 1878 Grant to Dent and Overbeck Excluded the Disputed Islands

4.4 The 1878 grant by the Sultan of Sulu to Messrs. Dent and Overbeck is discussed in paras. 5.9 to 5.16 of Malaysia's Memorial. This narrative refers by way of background to the 1877 Protocol between Germany, Great Britain and Spain, which established free trade and commerce in the Sulu Archipelago for the contracting parties, and then deals with the 1878 grant from the Sultan of Sulu and the simultaneous commission appointing Baron von Overbeck Dato' Bendahara and Rajah of Sandakhan[4].

4.5 Malaysia's Memorial subsequently moves on to discuss the 1878 Capitulation of the Sultan of Sulu to Spain, which allegedly confirmed Spanish sovereignty "over all the Archipelago of Sulu and the dependencies thereof"[5]. Following this, Malaysia recounts how Alfred Dent purchased Baron von Overbeck's interest in the 1878 Sulu grant and how this interest was in turn acquired, after the issuance of a Royal Grant in 1881, by the British North Borneo Company[6]. This overview is then concluded with a mention of the 1888 agreement between the British Government and the BNBC establishing the State of North Borneo[7].

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[4] *Ibid.*, paras. 5.9-5.12.

[5] *Ibid.*, para. 5.13.

[6] *Ibid.*, para. 5.14.

[7] *Ibid.*, para. 5.16.

4.6 Significantly, the portions of Malaysia's Memorial dealing with the Sulu grant of 1878 and other pertinent conventional instruments do not contain any mention of the islands of Ligitan and Sipadan. This is not surprising since the disputed islands were not included within the scope of any of these instruments. The language of the 1878 grant – in the version quoted in Malaysia's Memorial – clearly describes the extent of the territorial possessions that the Sultan of Sulu intended to transfer to Dent and Overbeck against payment of an annual sum in the following terms:

> "... all the rights and powers belonging to us over all the territories and lands which are tributary to us on the mainland of the island of Borneo from the Pandasan River on the west extending along all the lands on the east coast as far as the Sibuku River in the south and including all the territories on the coast of the Pandasan River and the coast lands of Paitan, Sugut, Bonggaya, Labuk, Sandakan, Kinabatangan, Mumiang, and all the other territories and coast lands to the southward thereof on the coast of Darvel Bay as far as the Sibuku River *together with all the islands included therein within nine miles of the coast.*"[8]

4.7 The terms of this grant left no room for ambiguity: islands lying beyond nine miles of the coast of North Borneo were not part of the territories over which rights and powers had been acquired by Dent and Overbeck by virtue of the 1878 grant by the Sultan of Sulu. It is common cause between the Parties that Ligitan and Sipadan fall more than nine miles from the coast and thus were excluded from the terms of the grant. As Malaysia's Memorial correctly points out: "Literally they [Pulau Ligitan and Pulau Sipadan] fell outside the terms of the Sultan's grant of January 1878..."[9].

4.8 The clear reference made in the 1878 grant to islands lying within nine miles of the coast (language which had also been contained *verbatim* in the 1877 concession to Dent and Overbeck by the Sultan of Brunei) acquires a greater significance in the light of the customary lack of precision in determining territorial possessions in the area which had been recognised by the colonial powers themselves[10]. It is evident that the Sultan of Sulu – by indicating a measure of distance from the coast – wanted to achieve as precise as possible an identification of the territorial possessions which formed the object of the grant.

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[8] *Ibid.*, para. 5.10. Emphasis added. Indonesia had also annexed a copy of the grant enclosed in the despatch from Consul-General Treacher to the Earl of Derby on 22 January 1878 as Annex 17, Vol. 2 of its Memorial. It should be noted that that version refers to islands situated "three marine leagues from the coast".

[9] *Ibid.*, para. 5.19.

[10] See IM Chapter IV, in particular, paras. 4.20-4.45.

4.9 This conclusion is consistent with the terms of the commission cited by Malaysia pursuant to which the Sultan of Sulu appointed Baron von Overbeck Dato' Bendahara and Rajah of Sandakhan. The document in question defined the territory over which Baron von Overbeck's authority was to be exercised as including "all the lands toward the eastward on the coast on the island of Borneo... *together with all the islands included therein*"[11]. This was plainly a *renvoi* to the terms of the grant, which limited von Overbeck's offshore authority to islands lying nine miles off the coast.

4.10 The maps relied on by Malaysia to illustrate the geographic extent of the 1878 grant also confirm the fact that Ligitan and Sipadan fell outside of the grant. Malaysia has drawn a dotted red line around the coast of North Borneo on Insert 8 at page 39 of its Memorial to show the distance of nine nautical miles from the coast indicated in the grant of the Sultan of Sulu. Since the map is purported to depict only the localities mentioned in the grant, the islands of Ligitan and Sipadan are not shown. However, it is clear from the map that the islands are situated well beyond the nine mile limit. Similarly, Map 4 of Malaysia's Atlas – which is a 1906 map of British North Borneo published by the BNBC on which Malaysia has added some colouring to show the localities ceded by the Sultan of Sulu in 1878 – plainly shows that the islands of Ligitan and Sipadan fell outside the scope of the Sulu concession[12]. This much is agreed between the Parties.

4.11 None of the subsequent events – either the capitulation of the Sultan of Sulu to Spain and the resulting Protocol of 22 July 1878, the Royal Charter granted to the BNBC in 1881, the 1885 Protocol between Spain, Great Britain and Germany, the 1903 Confirmation or the agreement creating the State of North Borneo – contained any language expanding or in any way modifying the territorial terms of the original 1878 grant so as to include either Ligitan or Sipadan. The geographical extent of the region being administered by Dent and Overbeck, and subsequently by the BNBC and the State of North Borneo, remained as defined by the original grant by the Sultan of Sulu which did not extend to islands, such as Ligitan and Sipadan, situated further than nine nautical miles from the coast[13].

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[11] MM, para. 5.11. Emphasis added.

[12] Map 4 of Malaysia's Atlas.

4.12 It should be noted, however, that the fact that the islands of Ligitan and Sipadan were excluded from the Sulu grant does not mean that they somehow remained within the dominions of the Sultan of Sulu and could be disposed of by Spain, who succeeded to the Sultan's rights by a subsequent treaty. As Indonesia showed in the previous chapter, the islands never fell within the Sulu dominions in the first place.

4.13 The correct position, as Indonesia explained in its Memorial, was that the islands of Ligitan and Sipadan were part of the territory transferred to The Netherlands by the Sultan of Boeloengan in the 1850 and 1878 Contracts of Vassalage[14]. Malaysia argues that the disputed islands were not included within the scope of these instruments because the reference to "small islands" contained therein did not concern the islands of Sipadan and Ligitan, but other small islands in the area[15].

4.14 Indonesia does not agree with this self-serving conclusion. Nonetheless, whatever ambiguities may have existed before 1891 as to the geographical scope of the territories belonging respectively to the Dutch, who succeeded to the rights and interests of the Sultan of Boeloengan, and British North Borneo were removed by the territorial allocation agreed between the British and Dutch Governments in the 1891 Convention and by the Supplementary Contract between the Ruler of Boeloengan and the Dutch Government of 19 June 1893, which brought the previous Contracts of Vassalage in conformity with the settlement resulting from the Convention.

4.15 Malaysia also alleges that when the Dutch Government was informed of the 1878 grant by the Sultan of Sulu to Dent and Overbeck, "its reaction was acquiescent"[16]. Malaysia goes on to suggest that the Dutch Government "recognised that the territories on the coast of North East Borneo belonged to the Sultan of Sulu, and that, for the most part at least, the territory which was covered by the 1878 grant related to 'districts which are not under the sway of the Netherlands' "[17]. Nothing in the record supports either of these assertions.

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[13] The implications of the 1903 Confirmation are discussed at paras. 4.27-4.32, below.
[14] IM, paras. 4.66-4.71.
[15] MM, paras. 7.3-7.5.
[16] *Ibid.*, para. 7.6.

4.16 If anything, the record shows that The Netherlands took appropriate steps to protect its interests in the area. The relevant Dutch activities included the following:

(a) Dutch authorities raised the national flag at Batoe Tinagat in 1878 to show that Dutch territories extended as far north as that location;

(b) During the period from 1875 to 1877, the Dutch vessel HNLMS *Admiral van Kinsbergen* conducted patrolling activities both around the island of Sipadan and even around islands lying further to the north (see para. 3.67, above and Annex 12);

(c) When, in 1883, the first Governor of North Borneo hoisted the North Borneo flag on the south bank of the Sibuko river and put a marker on a tree in the vicinity, the Dutch complained of what they perceived as a violation of their sovereignty and destroyed the tree (see para. 3.68, above);

(d) In 1888, when the British Government concluded certain agreements establishing Protectorates over Sarawak, Brunei and the territory of the BNBC, the Dutch Government expressed its concern as to their territorial implications and stressed the importance of reaching an agreement for the final settlement of the boundary dispute (see IM, para. 5.11);

(e) After the signature of the 1891 Convention, the record shows that the Dutch and the British cooperated in a joint effort to combat piracy in the area, with the British and Dutch Governments focusing their activities on areas lying to the north and south of the 1891 Convention delimitation respectively. Significant in this respect are the reports published by the *British North Borneo Herald* of 1 May 1892 and January 1895 (recalled at para. 3.71 above). Another pertinent example of this task-sharing activity with regard to the suppression of piracy is provided by the patrolling of the Dutch vessel HNLMS *Lynx* in the area around Sipadan and Ligitan in 1921 (see IM, paras. 3.72-3.74).

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[17] *Ibid.*, para. 7.11(1).

4.17 Thus, the record shows that the Dutch authorities, prior to 1891, were active in monitoring the situation in the area in order to avoid any possible British territorial encroachments and, after 1891, respected the limits of the British-Dutch jurisdictions as defined in the 1891 Convention. The Dutch Government received repeated assurances from the British Government that the BNBC was a purely private venture and that Britain's policy was to set up chartered commercial companies throughout the world "without any aim of territorial acquisition". Britain also assured The Netherlands that its goal was "not to set up any dominion, or to enter upon any controversy with respect to territorial claims, but simply, if we saw an opportunity, to promote the development of the resources of the country under discussion"[18]. In the light of these pledges by Britain, the Dutch Government was naturally confident that the actions by the BNBC did not involve a British attempt to encroach upon The Netherlands' territorial possessions in North Borneo.

4.18 With respect to Malaysia's allegation of Dutch acquiescence, the Memorial of Malaysia quotes from a reply given by the Dutch Minister of the Colonies to a question posed in the Committee of the Second Chamber of Parliament in 1879 in an effort to show that it was the Dutch Government's understanding that the Sulu concession did not infringe on Dutch territory[19]. Malaysia fails to point out, however, that at the last meeting of the Joint Commission on Borneo on 27 July 1889, the Dutch Minister to Great Britain, Count de Bylandt, made The Netherlands' position very clear. His account is contained in his own transcript of the Joint Commission meeting in the following terms:

> "In the protocol of our former meeting, Sir Philip Currie is reported to have said, that in 1879 the then Netherlands Minister for the Colonies (Baron de Golstein) had assured the States General that the concessions granted by the Sultans of Sulu and Brunei to Messrs. Overbeck and Dent, did not infringe on Netherlands rights, or territory. This is not quite correct. With the official record of that sitting in my hand I can show that the Minister, replying to an interpellation of a Member of the House, simply said that it did not appear that our rights had been infringed by the concessions, and that this assumption could not as yet be proved. And why not? Because, though the Minister was

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[18] IM, Annex 24, Vol. 2. See also IM, para. 3.36.

[19] MM, para. 7.6 and Annex 38, Vol. 3.

> aware that the concessions had been granted, he was at that time utterly unacquainted with their contents and could therefore not expect that our rights would be infringed by a friendly power"[20].

4.19 Count de Bylandt went on to say that he had, on several occasions, asked the British Government to provide him with a copy of the 1878 grant, but had always been told that "the British Government could not dispose of private documents which were not their own property". Although he subsequently obtained a copy of the grant, Count de Bylandt remained puzzled by the inexplicable reluctance shown by the British Government to "provide a friendly government with fair information on a subject in which political interests of some importance for my country were involved"[21]. He further recalled that his Government had previously objected strongly to the terms of the Charter granted to Messrs. Dent and Overbeck in a note sent to Earl Granville on 8 April 1881[22].

4.20 Count de Bylandt's concluding remarks do nothing to conceal his displeasure at Britain's conduct:

> "...we had repeatedly received, verbally and in writing, the most reassuring declarations that we had only to do with a private commercial undertaking, of no political character whatever; that there was no question of the British Government settling in North Borneo, nor of a British protectorate there, nor even of the hoisting of the British flag. But all of these reassuring and misleading declarations have been belied by subsequent facts. We have been all along kept in the dark and placed, uninformed, before accomplished facts. The draft of the Charter was no doubt communicated to us by courtesy, a few weeks before it was decided upon, leaving us scarcely the time to consider it and to present our objections. In fact, those objections reached me here in London only the day before the meeting of the Privy Council in which the draft of the Charter had to be considered and decided upon, so that this pro forma courtesy, was practically quite valueless to us"[23].

4.21 This is hardly the reaction of a country said to be acquiescing in another country's behaviour. On the contrary, the Dutch authorities were clearly concerned with the protection of The Netherlands' legitimate territorial rights and interests in the area and, suspecting that another friendly Government – despite its assurances that the BNBC's activities were of a purely private and commercial nature – had surreptitiously encroached upon these, were anxious to obtain a formal settlement of the position. This explains the subsequent negotiation and agreement of the 1891 Convention.

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[20] Emphasis in the text. See Annex 17, Vol. 2.
[21] *Ibid.*
[22] For a copy of the note by de Bylandt to Earl Granville, see MM, Annex 41, Vol. 3.
[23] Annex 17, Vol. 2. Emphasis in the text.

4.22 Nothing in the diplomatic correspondence justifies Malaysia's assertion that The Netherlands recognised that Dutch claims did not extend east of the coast of North Borneo. As will be seen in Chapter V, the documentary and map evidence shows that, during the negotiations of the 1891 Convention, the Dutch Government repeated their earlier claims which extended as far north as Batoe Tinagat – well to the north of the 4° 10' N latitude – and which specifically mentioned offshore islands. Moreover, the sketch maps exchanged between the Dutch and British negotiators further demonstrate that the proposed delimitation was intended to extend in a seaward direction so as to allocate between the parties islands and other offshore features[24]. The fact that Pulau Ligitan and Pulau Sipadan were ultimately deemed to belong to The Netherlands was confirmed by the 1891 Dutch Explanatory Memorandum Map – a map which was forwarded to Great Britain and which did not provoke any adverse reaction.

B. The 1885 Protocol Confirmed the Absence of British Title over the Islands

4.23 Paras. 5.17-5.19 of Malaysia's Memorial describe how Spain, by virtue of the 1885 Protocol, relinquished in favour of Great Britain all claims of sovereignty over the territory covered by the Sultan of Sulu's grant of 1878, including offshore islands situated within nine nautical miles of the coast.

4.24 Malaysia correctly notes that the islands of Ligitan and Sipadan, which lay more than nine nautical miles from the coast, fell "outside the terms of Spain's retrocession or recognition in Article II of the Protocol of 1885"[25]. Although Indonesia agrees with the general conclusion that the disputed islands could not have fallen within the scope of the 1885 Protocol, it should be noted that Malaysia's reference to Article II of the 1885 Protocol as the relevant provision in this regard is incorrect. Article II of the Protocol contained a general definition of the Sulu Archipelago in conformity with the definition provided in the 1836

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[24] See paras. 5.71-5.74, below.

[25] MM, para. 5.19.

Treaty between Spain and the Sultan of Sulu. While these provisions will be dealt with in greater detail in Chapter VI, it is appropriate to recall here that both of them concerned islands located well to the north of Ligitan and Sipadan.

4.25 The relevant provision of the 1885 Protocol with respect to the relinquishment of territory by Spain in favour of Great Britain is Article III, which provided as follows:

> "The Spanish Government relinquishes, as far as regards the British Government, all claims of sovereignty over the territory of the continent of Borneo, which belong or which have belonged in the past to the Sultan of Sulu (Jolo), including therein the neighbouring islands of Balambangan, Banguey and Malawali, *as well as all those comprised within a zone of three marine leagues [nine nautical miles] along the coasts, and which form part of the territories administered by the company styled the 'British North Borneo company*"[26].

4.26 As can be seen, this provision was entirely consistent with the terms of the 1878 grant to Dent and Overbeck in limiting British rights to islands lying within three marine leagues (or nine nautical miles) of the coast. Moreover, the geographic references contained in this provision mention specific islands which are situated well to the north, and the east, of Ligitan and Sipadan. It can therefore be concluded that there could be no question of the disputed islands ever having been transferred by either the Sultan of Sulu or Spain to the BNBC or to Great Britain.

C. The 1903 Confirmation Did Not Include the Islands and Was of No Legal Relevance

4.27 As noted in Indonesia's Memorial, on 22 April 1903 the Sultan of Sulu signed a statement referred to as a "Confirmation", approved by the British Governor of North Borneo on 29 April, in which the Sultan specified the names of certain islands – situated beyond nine nautical miles from the coast of Borneo - which were deemed to be included in the 1878 grant to Dent and Overbeck. This document identified a number of islands by name, including Omadal, Si Amil, Dinawan, Kapalai and Mabul and made a generic reference to "other islands near, or round, or lying between the said islands"[27]. Significantly, the islands Muliangin Kechil, Bilian, Tegaypil, Lang Kayen and Kapalai are referred to by name in this instrument, but Sipadan and Ligitan are not, despite the fact that they are of a similar size. This omission clearly indicates that neither Sipadan nor Ligitan were intended to be covered by the 1903 Confirmation.

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[26] Emphasis added. A copy of the 1885 Protocol with English translation was attached to IM at Annex 33, Vol. 2.

4.28 Despite this rather glaring lacuna, Malaysia alleges that the reference in the Sultan's Confirmation to "other islands near, or round, or lying between the said islands" must have been a reference to Ligitan and Sipadan which were therefore included within this document[28]. This argument is pure wishful thinking which is supported neither by the text of the document in question nor by the surrounding events.

4.29 In the first place, it should be noted that the Confirmation was an artificial device of dubious legality which was nothing more than a unilateral expansion of the original 1878 grant. As conceded in a British Foreign Office Memorandum of 10 March 1905, "the Sultan's declaration cannot be adduced in support of the Company's claim, as the limits of sovereignty in the Sulu Archipelago had already been fixed by international agreement and no statement on the part of His Highness could possibly alter them"[29]. Indeed, even Malaysia recognises the weakness of its argument when it observes that:

> "the British Foreign Office evidently had doubts about the legal effect of the Sultan's certificate, since whatever the position may have been in 1878, the Sultan no longer had any international status whatever [....] Even the Company itself came to realise that its title, as opposed to its right to administer the islands based upon actual administration and control, might be open to question"[30].

4.30 Of equal importance, as discussed in Indonesia's Memorial at para. 7.16, was the fact that the 1903 Confirmation only dealt with islands lying *north* of the 4° 10' N parallel and thus was fully consistent with the 1891 Convention. A simple geographic inspection of Map 7.1 facing page 135 of Indonesia's Memorial reveals that Sipadan and Ligitan are situated to the south of this line of latitude that had been agreed in the 1891 Convention, unlike the islands of

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[27] A copy of this document is contained in IM, Annex 99, Vol. 3.

[28] MM, para. 5.34.

[29] IM, Annex 109, Vol. 3.

[30] MM, para. 5.35.

Omadal, Si Amil, Dinawan, Kapalai, Mabul and the other islands which were specifically named in the Confirmation, all of which lay north of the 4° 10' N latitude. Nor could it be said that Ligitan and Sipadan were *round* the named islands; again, they are to the south of them and consequently fell under Dutch sovereignty pursuant to the terms of the 1891 Convention.

4.31 Finally, it is quite evident from the map prepared by Stanford for the BNBC in 1903, shortly after the Confirmation was signed, that neither Ligitan nor Sipadan were deemed to lie *between* those islands[31]. For convenience, the Stanford map - which reflected the territorial extent of the BNBC after the Confirmation was signed - is reproduced as Map 4.1 facing page 55. As can be seen from the enlargement of the relevant area reproduced opposite page 57, both Ligitan and Sipadan lie to the south of the red line appearing on the map which tracked the 1891 Convention line along the 4° 10' N latitude and which represented the southern limits of British North Borneo. Had the intention been to include Ligitan and Sipadan within the Confirmation, it would have been a simple matter to refer to them by name. Given that they were excluded from that instrument and lie to the south of the limits of the BNBC as shown on the Stanford map, it is impossible to give credence to the statement contained in Malaysia's Memorial that "[t]he reference in the Confirmation to the 'other islands near, or round, or lying between the said islands named above' was sufficiently extensive to cover, and undoubtedly did cover, Ligitan and Sipadan"[32].

4.32 Obviously, if for purposes of argument Malaysia's theory that the 1903 Confirmation covered the islands of Ligitan and Sipadan were to be accepted, this would mean that all of Malaysia's arguments based on Spanish title must be rejected. In other words, to the extent that Britain received confirmation from the Sultan of Sulu in 1903 that the disputed islands had been ceded to Dent and Overbeck in 1878, they could not have been disposed of by Spain in favour of the United States with the 1898 and 1900 Conventions.

4.33 Be that as it may, even supposing – which is denied – that the Sultan of Sulu had sovereignty over the islands of Ligitan and Sipadan, the fact of the matter is that neither the

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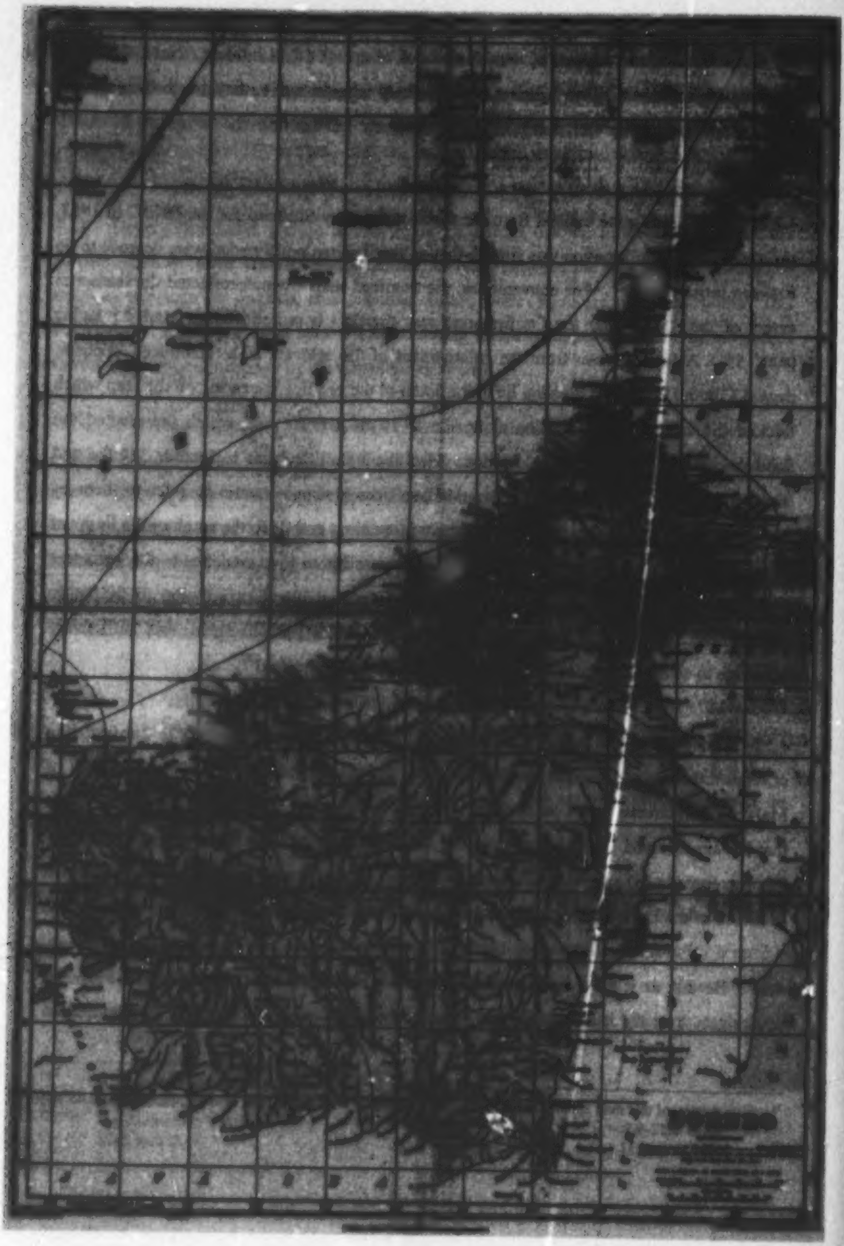
[31] A copy of this map appears as Map No. 9 in Indonesia's Map Atlas. See also *IM*, paras. 6.43-6.45 and paras. 6.52-6.56

[32] MM, para. 5.34.



Map 4.1

1878 grant from the Sultan of Sulu to Dent and Overbeck, nor the 1885 Protocol, nor the 1903 Confirmation provide any evidence supporting Malaysia's contention that the disputed islands were ever transferred or ceded to the BNBC or Great Britain. This being so, Malaysia's first chain of title must inevitably fail.

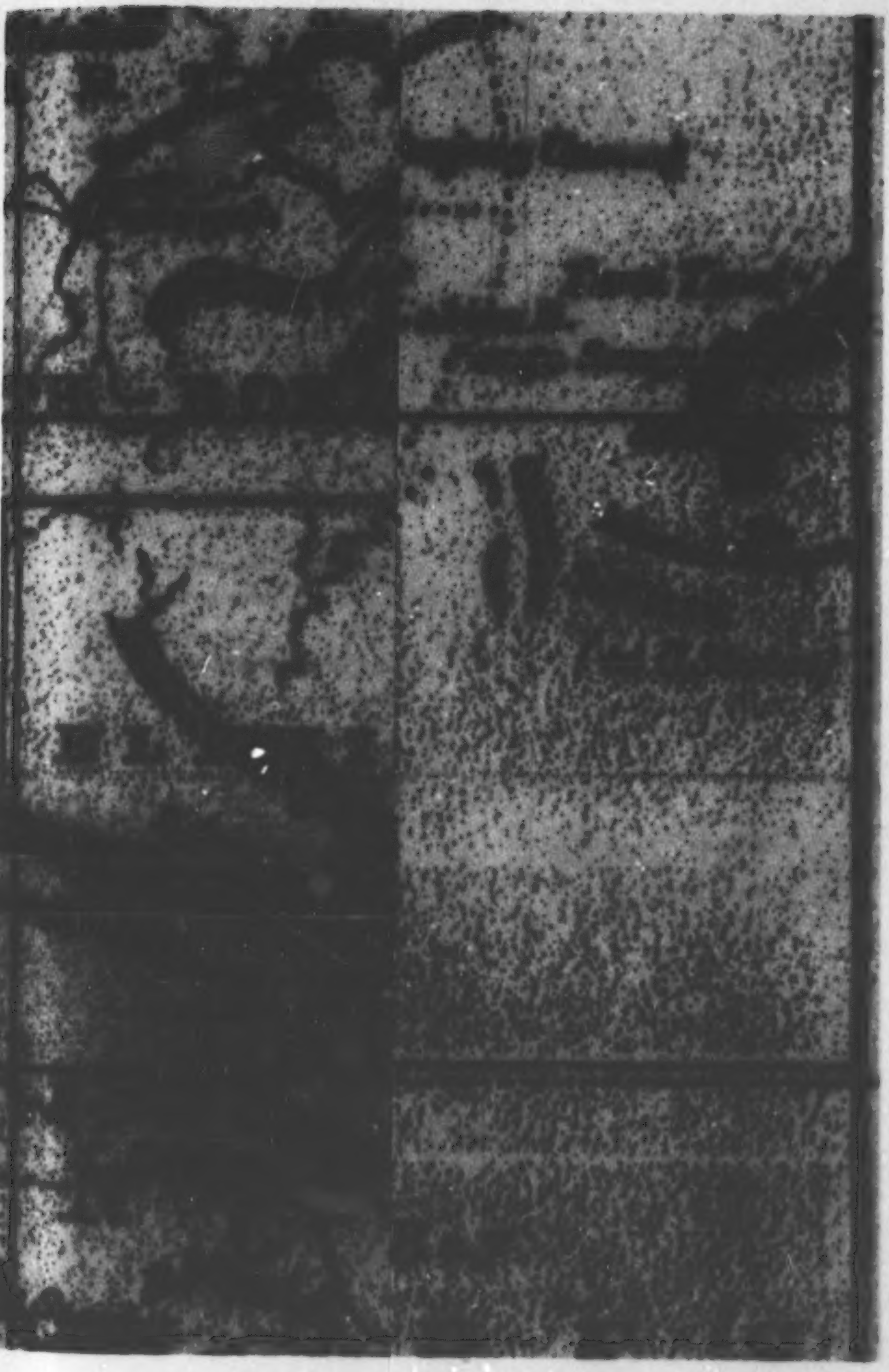
CHAPTER V

TITLE BASED ON THE 1891 CONVENTION

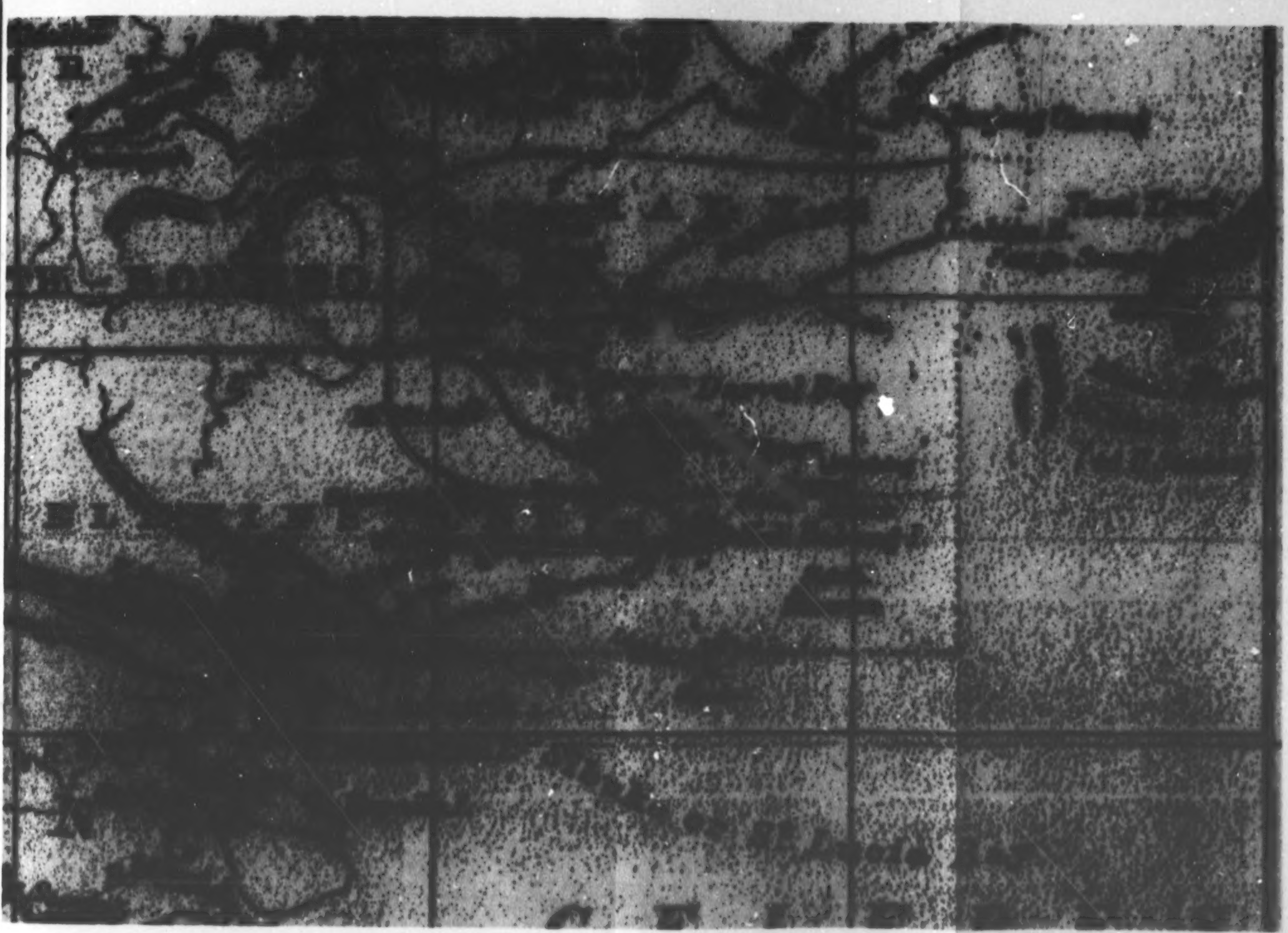
Section 1. Introduction

5.1 Indonesia set out its case on the significance of the Anglo-Dutch Convention of 20 June 1891 principally in Chapter V of its Memorial. At paras. 5.65-5.70 of its Memorial Indonesia summarised this part of its case as follows:

> (a) Whatever doubts there might have been up to the late 1880s as to the course of the dividing line between Dutch and British possessions in north-eastern Borneo, with the conclusion and ratification of the Convention of 20 June 1891 between Great Britain and The Netherlands any such doubts were finally set aside.
>
> (b) The Convention, by its terms, its context, and its object and purpose, established the 4° 10′ N parallel of latitude as the dividing line between the parties' respective possessions in the area now in question. The islands presently in dispute – Ligitan and Sipadan – lie to the south of that parallel. It therefore follows that under the Convention title to those islands vested in The Netherlands and now vests in Indonesia.
>
> (c) By its conduct at the time, and in particular by virtue of the Explanatory Memorandum Map and its variation of the Contract with the Sultan of Boeloengan, the Dutch Government demonstrated its understanding of the meaning to be attributed to Article IV of the 1891 Convention. It did so by means which were not only public knowledge at the time, but also by means of which the British Government were officially informed. Great Britain's failure to protest, or in any other way to dissent from the Dutch Government's views of which it had such public and official knowledge, showed that it accepted those views as the correct interpretation of the 1891 Convention.



Map 4.1 Enlargement



Map 4.1 Enlargement

(d) As envisaged in Article V of the 1891 Convention, further elaboration of parts of the 1891 boundary line was contained in later agreements concluded in 1915 and 1928; but since the 1891 line had been determined by a parallel of latitude its seaward extension did not call for any further precision, nor did circumstances at sea allow for any specific demarcation.

5.2 Malaysia set out its position on the 1891 Convention principally in Chapters 8 and 9, Sections B and C of its Memorial[1]. In its Memorial Malaysia adopts the following positions:

(a) Malaysia regards the 1891 Convention as solely a treaty determining the Anglo-Dutch boundary on land, and denies that it was intended to extend seaward east of Sebatik[2].

(b) Malaysia contends that in any event, since Ligitan and Sipadan belonged to Spain, Great Britain could not by the 1891 Convention have given them to The Netherlands[3].

(c) Malaysia regards the Explanatory Memorandum Map as a purely unilateral internal Dutch map, which depicted a line which was not opposable to Great Britain[4].

(d) Malaysia regards the Explanatory Memorandum itself as confirming that the Anglo-Dutch dispute only concerned the mainland boundary, and made no mention of any allocation of offshore islands[5].

(e) Malaysia regards the Dutch implementing statute of 1892 as confirming that the Dutch Government did not regard the Convention as affecting title to Sipadan and Ligitan[6].

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[1] See also, MM, paras. 2.5-2.8, 5.20, 7.11-7.12 and 7.13.
[2] *Ibid.*, paras. 8.7, *et seq.*
[3] *Ibid.*, para. 8.22.
[4] *Ibid.*, paras. 9.3-9.9.
[5] *Ibid.*, paras. 9.10-9.15.
[6] *Ibid.*, para. 9.16.

(f) Malaysia regards the modification of Boeloengan's boundaries by the variation of the "Contract of Vassalage" in 1893 as giving no indication of a Dutch view that the Convention allocated title to Sipadan and Ligitan to The Netherlands or to the Sultan of Boeloengan[7].

(g) Malaysia regards the 1915 Agreement as evidence that the parties intended the 1891 Convention to deal only with the land boundary and to go no further eastward than the east coast of Sebatik[8].

5.3 Indonesia, for the reasons to be set out below, does not accept the Malaysian position summarised in the preceding paragraph.

Section 2. The Terms of the 1891 Convention

A. The Nature of the Convention

5.4 The directly relevant provision of the 1891 Convention is Article IV. For convenience its terms are set out again here:

> "From 4° 10' north latitude on the east coast the boundary line shall be continued eastward along that parallel, across the island of Sebittik; that portion of the island situated to the north of that parallel shall belong unreservedly to the British North Borneo Company, and the portion south of that parallel to the Netherlands".

5.5 Malaysia contends that the 1891 Convention "was intended to be a land boundary treaty.... There is nothing in the Treaty to suggest that it was intended to divide sea areas or to allocate distant off-shore islands"[9].

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[7] *Ibid.*, para. 9.17.

[8] *Ibid.*, paras. 9.18-9.20.

[9] *Ibid.*, para. 8.8.

5.6 Malaysia asserts that "[i]n 1891 the distinction between a boundary treaty and an allocation treaty was well known"[10]. Malaysia does not offer any support for this assertion – an assertion which, Indonesia notes, runs counter to the observations of the Court in the *Frontier Dispute* case between Burkina Faso and Mali[11]. In that case the Court treated the distinction made by legal writers between "delimitation disputes" and "disputes as to attribution of territory" as more important in theory than in practice, and regarded such classifications as not decisive for the Court's task[12]. So too the alleged distinction drawn by writers between an allocation treaty and a boundary treaty is in the present context irrelevant: *both* kinds of treaties attribute territorial sovereignty to one or other of the States concerned.

5.7 Moreover, categories such as "boundary treaty" and "allocation treaty" are somewhat artificial concepts, developed to rationalise and classify seperately what were perceived by later commentators as treaties with different purposes. In reality, States do not pay much regard to such rationalizations. Indonesia is unaware of any example of States concluding a treaty which is in substance an allocation treaty and referring to it in the treaty itself as an "allocation treaty".

5.8 Indonesia is, however, aware of treaties which would clearly be classified by writers as allocation treaties but which the States concerned have not only not called them such but have in fact entitled them "boundary" or "frontier" treaties. One need look no further than the 1930 Anglo-U.S. Convention relied on by Malaysia[13]. This Convention was, according to its preamble, concluded for the purpose of "delimiting definitively the *boundary* between the Philippine Archipelago ... and the State of North Borneo"[14]. Article I identified a line "separating the *islands*"[15] belonging to the one side or the other, allocating them under Article III according to their locations on one side of the prescribed line or the other. Thus this self-proclaimed "boundary" treaty dealt with – indeed, dealt only with – the position of islands and not at all with land boundaries.

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[10] *Ibid.*, para. 8.7.

[11] *Frontier Dispute, Judgment, I.C.J. Reports 1986*, p. 554.

[12] *Ibid.*, at p. 564, para. 18.

[13] MM, para. 5.43, and Annex 29, Vol. 2; see also IM, Annex 126, Vol. 4.

[14] Emphasis added.

[15] Emphasis added.

5.9 In fact, whatever designation may be given to the treaties concerned, the attribution of sovereignty over islands is frequently done by way of their relationship to prescribed lines. As expressed by Oxman:

> "It is not uncommon for treaties dealing with cessions or allocations of sovereignty over islands or other territory to define the areas ceded or allocated between those states on the basis of lines drawn at sea. The essential purpose of those lines is to provide a convenient reference for determining which islands and territories are ceded or allocated to a particular party. Among other things, this approach avoids the need to identify precisely all islands and other territory ceded"[16].

5.10 The fact that the Dutch Government contemporaneously with the 1891 Convention regarded it as allocating title to various islands situated to the south of the 4° 10' N line is clearly shown by the terms of the variation made by The Netherlands to the "Contract of Vassalage" in 1893 to give effect to the 1891 Convention. Those terms are quoted by Malaysia in its Memorial[17]. In that variation the major islands of Tarakan, Nanoekhan and the southern part of Sebatik are mentioned by name, while their unnamed associated "small islands" are simply mentioned as having been allocated by virtue solely of their location south of the 4° 10' N line. This is entirely consistent with the "not uncommon" practice referred to by Oxman.

5.11 This "allocation" aspect of the variation of the "Contract of Vassalage" was known to the British Government, to which the terms of the variation were officially communicated[18]; the British Government, by its silence, acquiesced in this position. The consequential absence of any specific mention of small islands on the Dutch side of the agreed line no more denies Dutch sovereignty over them (if south of the agreed parallel) than the equivalent lack of specific mention of small islands on the British side of the line denies British sovereignty over them. For it must be recalled that, by virtue of Article IV of the Convention, the British Government was similarly entitled to treat all islands lying to the north of the 4° 10' N line as having been allocated to British North Borneo.

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[16] Oxman, B.H., "Political, Strategic and Historical Considerations", in Charney, J.I., and Alexander, L.M., (ed.), *International Maritime Boundaries* (1993), Vol. 1, p. 32.

[17] Para. 9.17; see also IM, para. 5.62.

[18] IM, para. 5.62.

5.12 Malaysia's attempt to treat the 1891 Convention as a "boundary treaty" rather than an "allocation treaty" is not only thus inconsistent with State practice and the behaviour of the parties, but is in principle misconceived. States do not consistently use the term "boundary" to refer only to land boundaries. Thus a treaty "defining the boundaries" between two States' territories is not necessarily solely concerned with their land boundary, and may not even be concerned with land boundaries at all. For example, the Convention between France and China of 26 June 1887[19] dealt with both offshore islands and the land boundary, even though in preamble it is referred to as a Convention concerning the delimitation of the "boundary". An even clearer example is afforded by the 1930 Anglo-U.S. Convention also already referred to para. 5.8 above. Similarly, Article 1 of the 1968 Iran-Saudi Arabia Agreement Concerning the Sovereignty over the Islands of Al-'Arabiyah and Farsi prescribes "a *boundary* line separating the terriorial seas of the two islands"[20].

5.13 Rather than attempting to rely on somewhat academic terminological classifications, what matters most are the terms actually agreed by the parties. The 1891 Convention begins (Article I) by prescribing the starting point "on the east coast of Borneo" for the "boundary between the Netherland possessions in Borneo and those of the British protected States in the same island": this language does not differ in any material respect from the language of the preamble in which the parties recorded what they wished to do. Articles II and III describe the course of the boundary westwards from that point; and Article IV describes the course of the boundary eastwards.

5.14 From thes actual terms of the Convention it is evident that:

(a) Malaysia is in error in stating that the 1891 Convention "had the express purpose of delimiting the land boundary between North Borneo ... and the Dutch territories on Borneo"[21]: there is no provision in the Convention expressly referring to its delimitation of only a *land* boundary, and as just noted the use of the term "boundary" carries with it no necessary implication to that effect[22].

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[19] Prescott, J.R.V., *Map of Mainland Asia by Treaty*, Melbourne University Press, 1975, pp. 433-436, at Annex 18.

[20] *United Nations Treaty Series*, Vol. 696, p. 189; Charney, J.I., and *Alexander*, L.M., (ed.), *op. cit.*, Vol. II, p.1526. Emphasis added.

[21] MM, para2.5. Emphasis added.

[22] See paras5.8 and 5.12, above.

(b) The parties were prescribing a line to separate their "possessions" – a term as apt for islands as it is for mainland territory.

(c) By referring in terms to the island of Sebatik, the Convention was demonstrably *not* limited to the mainland territory of Borneo.

(d) Malaysia, in acknowledging that the Convention dealt, "by implication, [with] the narrow belt of water between Sebatik and the main island of Borneo"[23], accepts that the Convention is not even limited to either mainland or insular land territory.

(e) The references in the Convention to Sebatik and (by implication) the water between Borneo and Sebatik show that the parties, in referring to possessions "in Borneo", were not restricting themselves to the mainland of that major island. It is, in fact, by no means unusual to include adjacent islands within the scope of a legal instrument dealing primarily, and by name, with a principal mainland territory. A clear example is to hand in the Sultan of Sulu's grant of January 1878 to Dent and Overbeck. The text as given by Malaysia is (in translation) headed "Grant by Sultan of Sulu of Territories and Lands on the Mainland of the Island of Borneo. Dated 22nd January, 1878"[24]: yet despite this express reference to the grant being of *mainland* territories and lands, the terms of the grant cover also all islands within 9 miles of the coast.

5.15 As regards that part of the defined boundary line which is immediately relevant to sovereignty over Sipadan and Ligitan, Article IV prescribes that, starting from the identified point on the east coast of the mainland of Borneo, "the boundary line shall be continued eastward along that parallel [i.e. 4° 10' N]". This is the main clause of the sentence. Contrary to Malaysia's assertion that the line goes no further than the east coast of Sebatik[25], Article IV contains nothing which suggests that the line stops at the east coast of Sebatik: on the contrary, the stipulation that the line was to be "continued" eastward along the prescribed parallel requires a prolongation of the line so far as was necessary to achieve the Convention's purposes[26].

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[23] *MM*, para. 8.9.

[24] *Ibid.*, Annex 9, Vol. 2.

[25] *Ibid.*, para. 8.11.

B. Interpretation of Article IV of the 1891 Convention

5.16 Malaysia further contends that the "plain and ordinary meaning" of the phrase "across the island of Sebittik" is that the line crosses Sebatik from the west coast to the east coast "and goes no further"[27]. For the reasons given in Indonesia's Memorial[28], Indonesia does not accept that that phrase has such a restricted meaning, which Indonesia considers not to be in accordance with the ordinary meaning of the words used in their context and in the light of the Convention's object and purpose.

5.17 The Court has held that customary international law found expression in Article 31 of the Vienna Convention on the Law of Treaties 1969, and that as a result the rules reflected in Article 31 of that Convention may be applied by the Court even as between States which were not parties to the Convention and also in respect of a treaty concluded before the Vienna Convention entered into force (*in casu* a treaty concluded in 1890): case concerning *Kasikili/Sedudu Island (Botswana/Namibia)*[29].

5.18 By virtue of Article 31 of the Vienna Convention:

> "1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

It is thus not just "the ordinary meaning" of the treaty's terms which governs their interpretation, but that meaning (i) in their context and (ii) in the light of the treaty's object and purpose.

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[26] See IM, para. 5.43(c).

[27] MM, para. 8.11.

[28] IM, para. 5.43.

[29] *Kasikili / Sedudu Island (Botswana / Namibia)*, *Judgment*, *I.C.J.*, 13 December 1999, at para. 18; see also *Territorial Dispute (Libyan Arab Jamahiriya / Chad)*, *Judgment*, *I.C.J. Reports 1994*, p. 6 at pp. 21-22, para 41.

(i) The Immediate Textual Context

5.19 The immediate textual context of the phrase now in question ("across the island of Sebittik") is that it is subordinate to the main clause stipulating that the line starts at a point on the mainland coast and is "continued" eastward. The purpose of that subordinate phrase is to make it clear that the line does indeed "continue" directly eastward and crosses the island of Sebatik, rather than, for example, going round that island before joining up again with the 4° 10' N parallel beyond its eastern coast, or leaving the island subject to some sort of shared sovereignty. Apart from thus clarifying the course to be taken by the boundary line as it crosses the island of Sebatik, that subordinate phrase contains no other limitation upon its course.

5.20 In order to convey the restricted sense of the phrase for which Malaysia contends, it would be necessary to add to the terms of the 1891 Convention words which do not appear in it, such as "and goes no further" or "to its eastern coast". If that had been the intention of the drafters of the Convention they could have easily made provision to that effect, *as they did in relation to the westward extension of the boundary*, as noted in para. 5.21, below. But in any event, the negotiators clearly had in mind an extension out to sea (which was necessary in order to put an end to all further disputes over possessions in the area), and any attempt to stop the agreed delimitation at the east coast of Sebatik would have been objected to by the Dutch.

5.21 In this respect the terms of Article IV regarding the eastward continuation of the line may be contrasted with the terms of Article III, in which for the westward extension of the boundary line the drafters *did* stipulate a terminal point for the line. That Article provides that the line shall follow a certain route "to Tandjong-Datoe on the west coast of Borneo". Thus the westward line stopped there. No equivalent terminal point was stipulated in Article IV for the eastward continuation of the line.

5.22 Malaysia's assertion that the meaning which it attributes to that subordinate phrase "accords with the usual primary definition of "across" and, in Dutch, "over" given in dictionaries" is unfounded[30].

(a) As regards the English language, in the context of Article IV and the phrase "continued eastward ... across the island of Sebittik", the word "across" is, grammatically, either a preposition expressing the relation between the 4° 10' N line and the island of Sebatik, or an adverb qualifying the verb "shall be continued". In those roles dictionaries give the word "across" numerous meanings[31], no one of which can be singled out as the primary meaning: everything depends on the word's grammatical role, and the context in which it is used.

(i) There are perfectly normal meanings of the word which signify, as Indonesia submits is the ordinary meaning of the word in its present context, "through and beyond" or "crossing and continuing over"[32]. Most of the many dictionary meanings are consistent with continuation beyond the far side of the object being crossed. Thus the sentence "Across the river there is a range of mountains" signifies in ordinary usage that somewhere on the other side of the river and beyond it there is a range of mountains – not that the range of mountains rises immediately on the far bank of the river. The use of the term "across" is accordingly fully consistent with the continuation of the 4° 10' N line beyond Sebatik's east coast.

(ii) It is therefore evident that the word "across" does not solely or even primarily convey the meaning for which Malaysia contends, namely that whatever is doing the crossing (in this case, the agreed line) stops at the far side of the object being crossed (i.e. the island of Sebatik). The use of the term

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[30] See MM, para. 8.11.

[31] *The Oxford English Dictionary*, 2nd Ed., at Annex 19.

[32] IM, para. 5.43(b).

"across" therefore does not of itself imply that the line terminates at the far side of Sebatik.

(b) As regards the Dutch language, the Dutch word "over" has many meanings, according to the authoritative Dutch dictionary by Van Dale[33]. These meanings vary according to the context. In the present context the meaning is definitely not restricted to the meaning attributed to it by Malaysia. It is also beyond doubt that the meaning attributed to the word by Indonesia is among those which in the present context the word can properly bear. Thus, in Dutch one says *"De evenaar loopt __over__ het eiland Borneo"* (the translation of which is: "The Equator runs across the island of Borneo"). Clearly, the Equator does not stop where the island ends, but continues beyond Borneo.

5.23 In any event, no purely grammatical or dictionary meaning of a term with as many nuances as the word "across" is likely by itself definitively to resolve questions as to the proper interpretation of Article IV. Indonesia's view as to the interpretation of Article IV is derived from the terms, context and purpose of Article IV, supported by the *travaux préparatoires* and confirmed by the post-signature conduct of the Dutch and British Governments. It is sufficient for present purposes to note that in both English and Dutch the ordinary grammatical and dictionary meaning of "across" supports the interpretation which Indonesia attributes to Article IV.

5.24 Malaysia also seeks support for its inter[illegible]tation of the subordinate phrase in Article IV from the terms of that part of the Article which follow the colon[34] mid-way through its text. That passage attributes the northern part of Sebatik to the British North Borneo Company and the southern part to The Netherlands. Malaysia argues that this second part of the Article "can only be read as referring to the island of Sebatik itself, and that this supports the understanding that the references to the island in the first part are likewise limited to the island itself"[35].

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[33] *Van Dale Groot Woordenboek Der Nederlandse Taal*, 11th Ed., at Annex 20.

[34] Not a semi-colon, as stated by Malaysia in MM, para 8.12.

[35] MM, para. 8.12.

5.25 Indonesia accepts that the second part of Article IV refers back to the island of Sebatik mentioned in the first part of the Article, and also that the reference[36] to the island of Sebatik in the first part of the Article is limited to the island itself (although in both contexts the reference to the island implicitly includes its territorial sea). That, however, is not the main point, which is rather that, as explained above, the main clause of the Article is a simple stipulation that the boundary line "shall be continued eastward": the subordinate phrase about the line crossing Sebatik is added so as to clarify the course to be taken by the line when it meets Sebatik[37], and the second part of the Article, after the colon, further clarifies the position by stating expressly, *in relation to that clarificatory subordinate phrase*, what the consequence is of the boundary line crossing the island – namely, that it divides Dutch territory from British territory.

5.26 Neither the subordinate phrase in the first part of the Article, nor the second part of the Article, assist Malaysia's argument that the line described in the opening main clause of the Article goes no further than the east coast of Sebatik. Indonesia agrees with Malaysia that Article IV describes the boundary line as crossing the island of Sebatik: it clearly does so. But that admitted and obvious proposition does not touch upon the question whether the line extends seawards beyond Sebatik. For the reasons given in Indonesia's Memorial[38], the correct interpretation of Article IV, in the context of the Convention and in the light of all the surrounding circumstances, is that the line prescribed by Article IV does extend seaward of Sebatik.

5.27 Malaysia is incorrect in asserting that Article IV "was introduced solely to deal with Sebatik"[39], and was dealing only with the "problem posed by the presence of the island of Sebatik" without serving the additional purpose of allocating title in respect of islands lying further east[40]. That Article IV did deal with "the problem of Sebatik" is undoubted; and that problem was one of particular concern to the parties in the negotiations leading to the conclusion of the Convention[41]. But the fact that Article IV addressed a specific problem does not mean that it did not *also* cover other matters where (as here) its terms are apt for that wider purpose.

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[36] In the singular, not the plural as stated by Malaysia.
[37] See para. 5.19, above.
[38] At para. 5.43.
[39] See MM, para. 8.9.
[40] *Ibid.*, para. 8.8
[41] See IM, paras. 5.25-5.31.

5.28 Malaysia's suggestion that Sebatik was dealt with because it was in effect ("virtually") part of the island of Borneo by virtue of being so close to the coast of Borneo[42] is an attempt by Malaysia to get round the undoubted facts that Sebatik *is* an island and is *not* part of the main island of Borneo. Along the 4° 10' N parallel it is separated from the east coast of the mainland of Borneo by a belt of water some 4 miles wide, and from the south coast of the mainland in the region of Tawau by a belt of water of a width of some 3 miles. It is an offshore island like numerous others in the area. It merited special mention in the Convention not because of its physical closeness to the mainland of Borneo but because of its size and its significance for navigation rights and the interest shown in it by the parties in the negotiations.

(ii) The General Context of the Treaty's Conclusion

5.29 It is not, however, sufficient to treat only the immediate textual context of a treaty provision in order to arrive at its true interpretation. In the first place, the context of a term of a treaty "is not merely the article or section of the treaty in which the term occurs, but the treaty as a whole"[43]. Moreover, account must also be taken of the general context of the treaty's conclusion. Thus in the *Anglo-Iranian Oil Company Case (Jurisdiction)*[44], the Court looked beyond the purely grammatical interpretation of the text before it and considered the general circumstances which had given rise to its preparation. Similarly, in the *Aegean Sea Continental Shelf* case the I.C.J. treated the circumstances surrounding the conclusion of an agreement as relevant to its interpretation[45]. Again, in *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility*[46], the Court, having held that what were referred to as "the Doha Minutes" constituted an international agreement[47], had recourse to the general circumstances surrounding their adoption in deciding upon the correct interpretation to be given to them[48].

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[42] MM, para. 8.8.

[43] *Year Book of the International Law Commission*, 1966, Vol. II, p. 221 (para. 12 of the Commentary to draft article 27 on the law of treaties).

[44] *Anglo-Iranian Oil Co., Preliminary Objection, Judgment, I.C.J. Reports 1952*, p. 93 at pp. 104-107.

[45] *Aegean Sea Continental Shelf, Judgment, I.C.J. Reports 1978*, p. 3 at p. 23, para. 55.

[46] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1995*, p. 6.

5.30 In relation to the 1891 Convention this general context includes the following elements, all of which affect the interpretation to be given to Article IV, and support the position adopted in this respect by Indonesia and contradict that put forward by Malaysia:

(a) the clear claims of the Sultan of Boeloengan to inland areas north of the Tawau coast and well to the north of 4° 10' N, which were acknowledged by Great Britain in agreeing, in Article VII of the 1891 Convention, to the Sultan having certain continuing transitional rights to jungle produce[49];

(b) Dutch activity in the area evidencing Dutch claims to sovereignty extending to the north of the eventual 4° 10' N line[50].

(c) the prevailing uncertainty at the time as to the precise extent of the territories belonging to the two parties[51];

(d) the occurrence of occasional Anglo-Dutch confrontations as a result of these uncertainties;

(e) the desire to resolve the uncertainties once and for all so as to avoid future disputes[52].

(iii) Agreement in Connection with the Conclusion of the 1891 Convention

5.31 Article 31.2 of the Vienna Convention provides that for the purpose of the interpretation of a treaty its context includes:

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[47] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994*, p. 112, at pp. 126-127, para. 41.

[48] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1995*, p. 6 at pp. 17-21, paras. 31-40.

[49] See IM, para. 5.22.

[50] See para. 4.16, above.

[51] See IM, paras. 5.3-5.4.

[52] *Ibid.*, paras. 5.56, 5.58-5.60.

"(a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty".

5.32 In Indonesia's submission the interaction of the British and Dutch Governments in relation to the so-called Explanatory Memorandum Map[53] establishes an agreement between the two governments regarding the seaward course of the Anglo-Dutch boundary east of Sebatik. Without prejudice to the fuller statement of the position at paras. 5.48 *et seq.* of Indonesia's Memorial, Indonesia recalls that the essentials of the position concerning this map are that:

(a) the map depicted a line extending well out to the east of Sebatik along the 4° 10' N parallel of latitude;

(b) it was officially prepared by the Dutch Government immediately after the conclusion of the 1891 Convention and in connection with its approval by the Netherlands States-General as specifically required by Article VIII of the Convention;

(c) it was publicly and officially available at the time;

(d) it was officially known to the British Government at the time in the context of the 1891 Convention;

(e) the British Government, in the face of its official knowledge of the map, remained silent, neither expressing dissent from it nor protesting against it, and is thereby to be regarded as having assented to it as an accurate reflection of the intention and meaning of the 1891 Convention.

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[53] *Ibid.*, para. 5.48.

5.33 For these reasons[34] Indonesia maintains that the circumstances constitute an agreement relating to the 1891 Convention which forms part of the context of the Convention within the meaning of Article 31.2(a) of the Vienna Convention.

5.34 Malaysia asserts that the Explanatory Memorandum Map was merely an internal Dutch map and that nothing establishes that the line drawn on the map and extending seaward of Sebatik "was agreed by or opposable to Britain"[35]. Malaysia appears to have been unaware of (at least, it did not in its Memorial draw the attention of the Court to) the full facts of the situation as set out in Indonesia's Memorial, from which the British Government's official knowledge of the map, and its silence (and thus acquiescence) in the face of that knowledge, is clear.

(iv) Instrument Accepted as Being Related to the 1891 Convention

5.35 Article 31.2 of the Vienna Convention also provides that for the purpose of a treaty's interpretation its context includes:

> "(b) any instrument which was made by one or more of the parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty".

5.36 Without prejudice to the proceding argument that the interaction between the Dutch and British Governments in relation to the Explanatory Memorandum Map establishes an agreement between them for purposes of Article 31.2(a) of the Vienna Convention, Indonesia submits additionally, as well as in the alternative, that for the reasons there set out that interaction establishes the map as an instrument made by the Dutch Government in connection with the conclusion of the 1891 Convention (particularly its Articles IV and VIII) and accepted by the British Government as an instrument related to it.

(v) Object and Purpose of the 1891 Convention

5.37 Indonesia agrees that the ordinary meaning of a term is to be determined in the light of the object and purpose of the treaty. Malaysia asserts that "[i]t would not be in accord with the manifest object and purpose of the Treaty to interpret Article IV as serving the additional purpose of allocating title to the Netherlands in respect of islands south of a line in the sea extending indefinitely eastwards ... along the latitude of 4° 10' N"[56]. Indonesia rejects the conclusion thus advanced by Malaysia. Malaysia's statement calls for several comments.

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[34] More fully set out at IM, paras. 5.48 *et seq.*

[35] See MM, para. 9.9, and paras. 9.3 *et seq.*

5.38 First, in the preamble to the 1891 Convention the parties stated that they were "desirous of defining the boundaries" (in the plural) between the Dutch and British possessions in Borneo. In itself that expression of the parties' intention was as apt for island territories as for the mainland (given that the words "boundaries" and "in the Island of Borneo" cannot be given a purely mainland meaning – as discussed in paras. 5.12 and 5.14, above). Moreover, the reference to the desire to define the boundaries between "*the* Netherlands possessions" in Borneo and the British States there implies, by the use of "the", that it was the boundaries relating to *all* the Dutch possessions in the area which were to be settled.

5.39 Second, the preamble to the 1891 Convention merely describes what the parties were doing in concluding the Convention. It is, however, necessary to look not only to the preamble but also to the dealings between the parties leading up to the conclusion of the Convention, from which their object and purpose may be discerned. In *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* the Court ascertained the object and purpose of the so-called "Doha Minutes" from an enquiry into the underlying attitudes of the Parties at the time the Minutes were adopted[57]. Given the underlying uncertainties over the extent of each party's territory and the consequential likelihood of continuing dispute[58], the reason why they wished to define the boundaries between Dutch and British possessions in the north-east region of Borneo area was to resolve the uncertainties once and for all[59]. The uncertainties extended to island territories as well as to mainland territories, and the terms of Article IV were appropriate for giving effect to the Convention's object and purpose in relation to islands lying eastward of Sebatik and are to be understood in that sense. It is fully in accord with that object and purpose for the Convention to deal with all offshore islands in [illegible] equally, it is not in accord with that object and purpose to treat Article IV as dealing only with the island of Sebatik, thus leaving open other potential sources of territorial differences. The allocation of title to offshore islands was not just an "additional" purpose of the Convention, but an integral part of its main purpose.

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[56] *Ibid.*, para. 8.8.

[57] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1995*, p. 6 at p. 19, paras. 35-36.

[58] See paras. 5.30 (c) and (d), above.

[59] See IM, paras. 5.56, 5.58-5.60.

5.40 Third, the allocation of title by Article IV was not just a one-way action in favour of The Netherlands. The allocation had effect in relation to both parties – while islands to the south of the line would not be claimed by the British North Borneo Company, equally islands north of the line would not be claimed by The Netherlands. Thus it was made clear that, for example (and apart from the line's impact upon Sipadan and Ligitan), there would be no Dutch claim to Mabul or Kapalai (both a similar distance to the north of the line as Sipadan is south of it, and both about as far east of Sebatik, i.e. approximately 45 miles) or to Si Amil (similarly about the same distance east of Sebatik as Ligitan, i.e. about 59 miles), and no British claim to Nanoekhan or Tarakan, an island approximately as far from Sebatik as Sipadan, and mentioned expressly in the Dutch Government's 1893 amendment to the "Contract of Vassalage" which was quoted by Malaysia[60]. Thus possible future disputes about all the many islands in the relevant waters were to be avoided by an allocation of sovereignty over them to Great Britain (through the BNBC) or The Netherlands, as the case might be.

5.41 Fourth, although Sipadan and Ligitan are the islands currently in dispute, it is wrong to treat Article IV as relevant only to those islands (as does Malaysia in MM, para. 8.10, treating Sipadan as the first island east of Sebatik to be reached by the 4° 10' N line). Other islands in the area are equally affected by the prescribed boundary line[61], and some of them are closer to Sebatik than Sipadan (e.g. Kalumpang, Silungan and Gusungan). That there is no dispute about them is precisely because both Parties (and their predecessors) have accepted the stipulations of Article IV, and have not questioned their attribution to the one party or the other in accordance with those stipulations: it is regrettably otherwise in relation to Sipadan and Ligitan.

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[60] See MM, para. 9.17; see also IM, para. 5.62.

[61] See preceding paragraph.

5.42 The situation is well illustrated by the incident in 1876 involving the activities at Mabul island of the Dutch warship HNLMS *Admiraal van Kinsbergen*[62]. At that time Mabul, which lies to the north of the eventual 4° 10' N line, was regarded as belonging to the Sultan of Boeloengan, and The Netherlands accordingly felt entitled to land armed sloops on Mabul. But after the 1891 Convention Mabul, along with other islands similarly to the north of 4° 10' N, was accepted as being British, and when subsequently the Dutch warship HNLMS *Lynx* had occasion to patrol the same waters it observed the limit of that line and made no territorial incursion north of it[63].

5.43 Fifth, the implication that there is something wrong or unusual in prescribing a line which extends eastwards "indefinitely" is unjustified. As already noted[64], the line extends eastwards so far as may be necessary for the purposes of the Convention to be achieved. The line is extended "indefinitely" in that no end-point is stipulated, but this does not mean that the line is extended endlessly: the limit to its eastward extent is provided by the context of the Convention, and in particular by the purpose which the Convention was intended to achieve – the settlement, once and for all, of possible Anglo-Dutch territorial differences in the region.

5.44 It is not unusual for indefinite lines to be stipulated. Thus:

(a) Gambia/Senegal Maritime Boundary Agreement 1975[65]: Articles One and Two of the Agreement identify a starting point for the maritime boundary at or near the coast and then stipulate that the seaward extension of the boundary from that point "follows the parallel of latitude 13° 35' 36" North"[66]: no terminal point is given or described.

(b) Guinea-Bissau/Senegal Maritime Boundary 1960[67]: the Agreement prescribed an azimuth of 240° for the delimitation of the territorial sea boundary, and then provided that beyond the territorial sea "the delimitation would consist of the straight line extension in the same direction of the territorial sea boundary": no terminal point is given or described.

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[62] Para. 3.67, above.

[63] See IM, para. 6.3.

[64] See para. 5.15 above, and IM, para. 5.43(c).

[65] See Charney, J.I., and Alexander, L.M., (ed.), *op. cit.*, Vol. 1, p. 854.

[66] Article Two uses the same language, but the relevant parallel is 13° 03' 27" North.

[67] *Ibid.*, p. 872.

(c) Canada/Denmark Agreement relating to the Delimitation of the Continental Shelf 1973[68]: the Agreement prescribes a delimitation line joining 127 identified points and then provides, in Article II.4:

> "For the time being the Parties have not deemed it necessary to draw the dividing line further north than point No. 127 or further south than point No. 1."

Thus the parties acknowledged that the dividing line extended at both ends beyond the 127 specified points, but its terminal points were neither given nor described.

(d) Numerous agreements do not give a terminal point for a maritime boundary line although they do describe the circumstances which will eventually determine its eventual termination. Examples include: (i) USA-USSR Maritime Boundary Agreement 1990[69], which defines the boundary by reference to an initial starting point from which "the maritime boundary extends north along [a specified] meridian through the Bering Strait and Chukchi Sea into the Arctic Ocean as far as permitted under international law"; (ii) Colombia-Costa Rica Maritime Boundary Agreement 1977[70], Article I of which stipulates that "From the intersection of [a specified parallel and meridian] the boundary shall continue north along the said meridian to where delimitation must be made with a third State"[71]. As with the 1891 Anglo-Dutch Convention the context of which establishes that the 4° 10' N line continues for so far as may be necessary to fulfil the purposes of the Convention, these agreements do not identify by precise coordinates the terminal point of the prescribed line, but do indicate the

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[68] *Ibid.*, p. 380; *United Nations Treaty Series*, Vol. 950, p. 147.

[69] See Charney, J.I., and Alexander, L.M. (ed.), *op. cit.*, Vol. 1, p. 455.

[70] *Ibid.*, p. 474.

[71] Similar provisions will be found in the maritime boundary agreements concluded e.g. between Colombia-Dominican Republic 1978, Art. II (Charney, J.I., and Alexander, L.M. (ed.), *op. cit.*, p. 488); Colombia-Honduras 1986, Art. I (*ibid.*, p. 517); Colombia-Panama 1976, Art. I.A.2 and B.2 (*ibid.*, p. 532); Dominican Republic-Venezuela 1979, Art. 2.1 (*ibid.*, p. 588); Trinidad and Tobago-Venezuela 1989, Art. II (*ibid.*, 672); USA-Venezuela 1978, Art. 2 (*ibid.*, p. 701); Colombia-Costa Rica 1984, Art. I.B (*ibid.*, p. 806).

> consideration according to which the terminal point will be determined when it is necessary to do so.

(vi) Subsequent Agreement or Practice

5.45 In addition to the context of the 1891 Convention, Article 31.3 of the Vienna Convention requires that there be taken into account, together with the context:

> "(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
>
> (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;...".

5.46 Without prejudice to the arguments set out above at paras. 5.31-5.36 that the interaction between the Dutch and British Governments in relation to the Explanatory Memorandum Map establishes an agreement between them for purposes of Article 31.2(a) of the Vienna Convention and/or an instrument for the purposes of Article 31.2(b) of the Vienna Convention, Indonesia submits additionally, as well as in the alternative, that for the reasons set out in those paragraphs that interaction establishes the Explanatory Memorandum Map as a subsequent agreement or as subsequent practice for the purposes of Article 31.3(a) and (b) of the Vienna Convention.

5.47 As regards the existence of a *subsequent agreement*, Indonesia submits that the interaction of the British and Dutch Governments in relation to the Explanatory Memorandum Map shown opposite page 81 as Map 5.1 establishes an agreement between the two governments regarding the seaward course of the Anglo-Dutch boundary east of Sebatik[72]. That agreement – constituted by the official and public promulgation of the Explanatory Memorandum Map, knowledge of it by the British Government, and that Government's acquiescence in its contents – related to the interpretation of the 1891 Convention or the application of its provisions, in particular Article IV.

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[72] IM, para. 5.48; and para. 5.32, above.

5.48 As regards the existence of a *subsequent practice*, the Map was produced immediately after the signature of the Convention, and as part of its ratification by The Netherlands. Ratification by the States General was expressly required by Article VIII of the Convention. The production of the Map as part of that process was thus an official and public act of the Dutch Government in the application of the Convention, known to and acquiesced in by the British Government. By virtue of the conduct of the two Governments, their practice in relation to the Explanatory Memorandum Map established their agreement regarding the interpretation of the 1891 Convention, and in particular Article IV.

5.49 Indonesia recalls that the behaviour of the Dutch and British Governments with regard to the Explanatory Memorandum Map offers very close parallels with the circumstances surrounding the so-called "*Livre Jaune*" map prepared and published by France at the time of the conclusion of a Franco-British "Additional Declaration" of 21 March 1899[73]. The Court held that map, publicly available and unprotested by the British Government, to have amounted to an authoritative interpretation of the Declaration[74].

5.50 Indonesia would also recall the map prepared in 1903 by Edward Stanford. He was effectively the official cartographer for the BNBC and in 1888 had prepared for the BNBC the base-map used by both sides during the 1889 Joint Commission meetings and the subsequent 1891 Convention. In 1903 he published a further map[75] showing a similar understanding to that recorded in the Explanatory Memorandum Map, by marking the southern offshore boundary of North Borneo's Elphinstone Province by a line which coincides with the course of the 1891 line running seaward of Sebatik along 4°10' N parallel to a point lying to the north and east of Ligitan and Sipadan islands.

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[73] *Ibid.*, para. 5.52.

[74] *Territorial Dispute (Libyan Arab Jamahiriya / Chad), Judgment, I.C.J. Reports 1994*, p.6 at p. 18, para. 28, p. 30, para. 58, p. 33, para. 61 and 34, paras. 64-65.

[75] The map is reproduced in Chapter IV above as Map 4.1. See IM, paras. 6.52-6.56, with interleaved copies of Map 6.4 and an enlargement of the relevant area. This map is also in Indonesia's Map Atlas, No. 9.

C. Alleged Spanish Sovereignty over Sipadan and Ligitan

5.51 Malaysia argues that in any event the 1891 Convention could not have allocated Sipadan and Ligitan to The Netherlands since at that time they belonged to Spain[76]. As will be explained below in Chapter VI, the islands did not belong to Spain in 1891. Consequently, no question of Spanish title prevents the 1891 Convention having the effect for which Indonesia contends.

5.52 Nevertheless, treating this Malaysian argument based on Spanish sovereignty with a respect which it scarcely deserves, Malaysia argues that Spain's title meant that "Britain had no title which it could convey to the Netherlands in 1891"[77] and that "Britain could not have agreed to cede [the islands] to the Netherlands"[78]. As explained, the premise that Spain had title to the islands is not accepted by Indonesia. But in any event, Malaysia misrepresents the effect of the 1891 Convention. It did not involve any British cession of mainland territory or islands to The Netherlands, or any equivalent cession by The Netherlands to Great Britain. The disputed areas were, by definition, not previously indisputably under the sovereignty of either party so as to enable it to cede them to the other, or to enable that other to accept such a purported cession: both parties no doubt considered that mainland territories and islands on their side of the agreed line were *already* theirs, rather than that they had *become* theirs by virtue of a treaty cession. The 1891 Convention involved, in relation to disputed areas, less a cession of territory than a relinquishment of claims to mainland territory and islands on the other party's side of the agreed line and a recognition of the other party's title over territories on that party's side of the line. In effect, Great Britain was, and Malaysia is now, precluded both from asserting its own title to territories south of the 4° 10′ N line and from denying Dutch title to such territories.

5.53 Malaysia asserts that although in law the Sultan of Sulu had not transferred Sipadan and Ligitan to Dent and Overbeck by virtue of the 1878 grant (for Malaysia acknowledges that they were more than 3 marine leagues from the Borneo coast at para. 5.19 of its

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[76] MM, paras. 5.20(d) and 8.22.
[77] *Ibid.*, para. 5.20(d).
[78] *Ibid.*, para. 8.22.

Memorial), and although thereafter the islands had not been covered by Spain's 1885 relinquishment of title in favour of Great Britain (for Malaysia equally acknowledges in the same paragraph that for the same reason they fell outside the scope of that instrument), nevertheless ("Despite this") the British North Borneo Company "went ahead and acted on the basis that it had authority over" them[79]. Malaysia offers no evidence of any such activity on the part of the BNBC *in relation specifically to the islands of Sipadan and Ligitan* in the period between the making of the grant and the conclusion of the 1891 Convention, and Indonesia does not accept that any authority was exercised by the BNBC over the islands. However, if *arguendo* the BNBC was, as asserted by Malaysia, in actual possession of the islands at the time, that possession (which Malaysia is precluded from denying) was a sufficient basis for Great Britain's disclaimer under the 1891 Convention of further interest in title to the islands.

5.54 It is further to be noted that it is apparent from Malaysia's version of events that the islands did not legally come within the scope of the territories later placed under the authority of the British North Borneo Company. The Company, says Malaysia, simply "went ahead and acted on the basis that it had authority over those islands"[80]. Thus if the facts as to the Company's exercise of authority over the islands were as stated by Malaysia (which Indonesia denies), the Company was clearly acting unlawfully. *Ex injuria jus non oritur.*

5.55 Malaysia seeks to legitimise this illegality by asserting that "Spain appears to have been quite indifferent to this and never opposed their administration from and by North Borneo"[81]: in effect, therefore, Spain is alleged to have implicitly acquiesced in the Company's usurpation of Spanish rights over the islands. But this attempt to justify the Company's activities is inadequate. Once again, Malaysia offers no evidence for any Spanish acquiescence *in relation to Sipadan and Ligitan.* First, no evidence is given of any activity on Sipadan and Ligitan in which Spain could have been said to have acquiesced; second, Spain is not shown to have had any knowledge on the basis of which its acquiescence could have been based. In any event, for the reasons given in paras. 6.3-6.13, Spain's acquiescence, even if it could be established, is legally irrelevant since title to the islands did not vest in Spain in the years leading up to 1891.

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[79] *Ibid.*, para. 5.19.

[80] *Ibid.*

[81] *Ibid.*

5.56 Malaysia asserts that British sovereignty over the islands was definitively established by eventual Spanish and U.S. renunciation of sovereignty in favour of Great Britain in agreements of 1885, 1907 and 1930[82]. Indonesia denies that those agreements had that effect. But even if it were to be supposed, solely for the purpose of argument, that they could have had that effect the result would be different from that for which Malaysia contends.

(a) Any Spanish renunciation of sovereignty in favour of Great Britain in 1885 must today be seen in the light of the subsequent 1891 Anglo-Dutch Convention. By that Convention Great Britain acknowledged, *vis à vis* The Netherlands, that territories south of the 4° 10′ N line were Dutch.

(b) As regards the Anglo-U.S. agreements of 1907 and 1930, the 1891 Convention was still in force in 1907 and 1930 between the United Kingdom and The Netherlands. If the agreements of 1907 and 1930 had had any effect in relation to Sipadan and Ligitan in favour of the United Kingdom, then as against The Netherlands the United Kingdom was still bound by its 1891 relinquishment of claims to mainland territory and islands to the south of the line agreed in the 1891 Convention and its recognition of Dutch title south of that line.

5.57 Accordingly, any title allegedly acquired by Great Britain as a result of the 1885, 1907 and 1930 agreements became immediately non-opposable to The Netherlands by virtue of the provisions of the 1891 Convention. Any such title (which in any event Indonesia denies was ever established) would therefore now similarly be non-opposable by Malaysia as against Indonesia.

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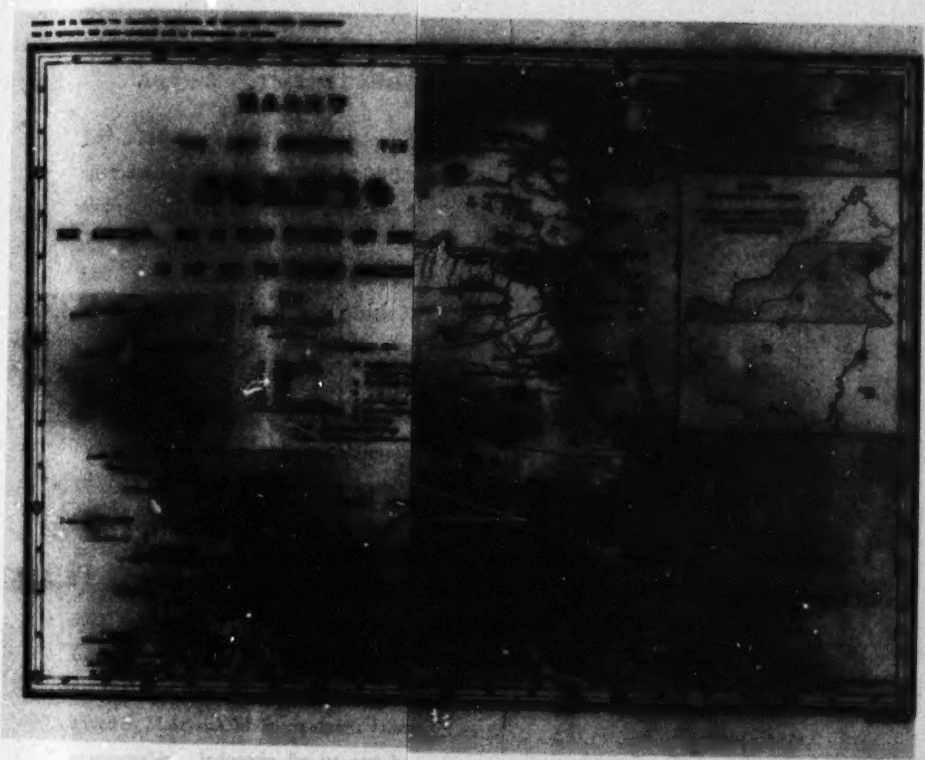
[82] *Ibid.*, paras. 2.2, 5.18, 5.39-5.40 and 5.43.

ANNEX TO THE EXPLANATORY MEMO

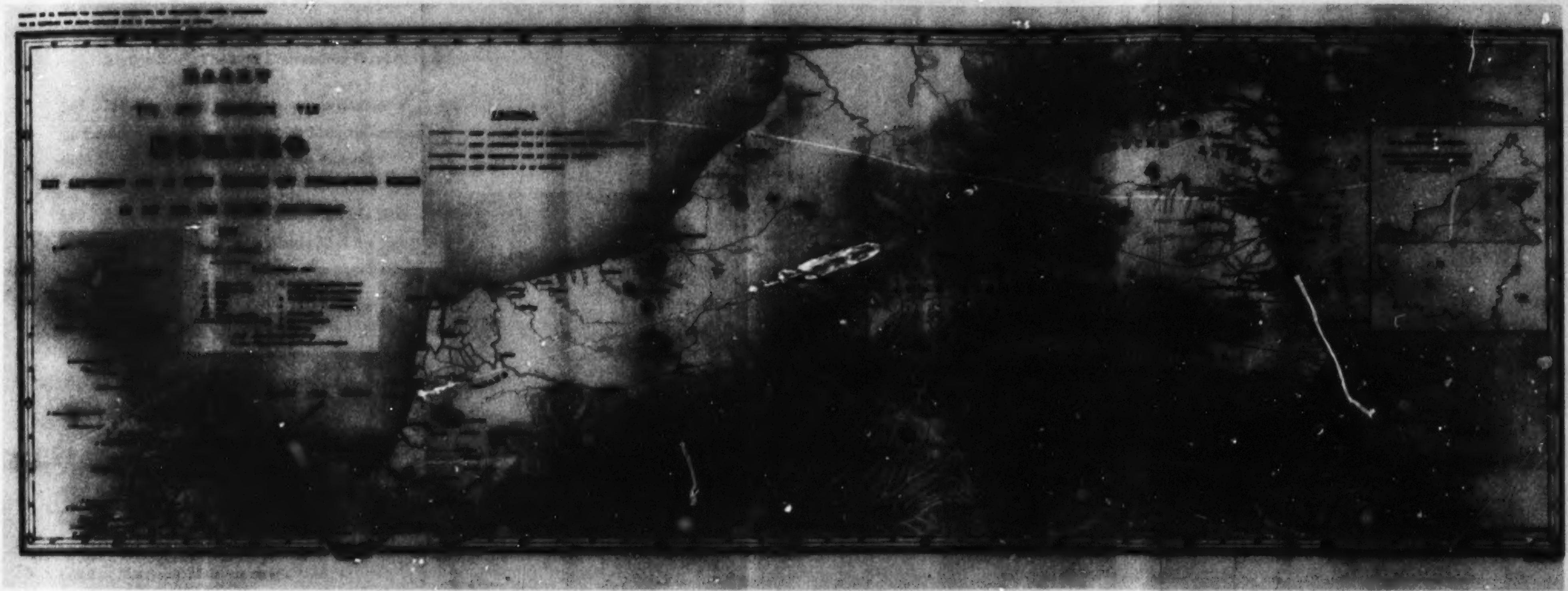


Map 5.1

Legend:

Blue line:	boundary (originally) clai
Yellow line:	boundary (originally) clai
Green line:	boundary proposed by Br
Red line:	boundary set out in the C

ANNEX TO THE EXPLANATORY MEMORANDUM TO BILL FOR RATIFICATION OF BOUNDARY TREATY OF 1891



Map 5.1

Legend:

Blue line: boundary (originally) claimed by the Dutch Government
Yellow line: boundary (originally) claimed by the British North Borneo Company
Green line: boundary proposed by British Government
Red line: boundary set out in the Convention

5.58 For the reasons given in the preceding paragraphs, Malaysia's argument based on alleged Spanish title to Sipadan and Ligitan in 1891 is untenable, and Indonesia rejects it. It is to be noted that nowhere in the records of the meetings of the Joint Commission in 1889, is there any suggestion that territories in the boundary areas being discussed were or might be subject to any other State's sovereignty. The parties were satisfied that all the possessions in issue in their negotiations were not *terrae nullius*, and belonged to one or other of them and to no one else, and they proceeded to settle their differences once and for all on that basis. They acted correctly in doing so.

Section 3. The 1891 Convention: *Travaux Préparatoires*

5.59 Malaysia asserts that the *travaux préparatoires* of the 1891 Convention confirm the interpretation of Article IV for which Malaysia contends – namely, that it is limited in its scope to the island of Sebatik. Indonesia disagrees.

5.60 Recourse to the *travaux préparatoires* of a treaty is one of the supplementary means of interpretation, as provided for in Article 32 of the Vienna Convention on the Law of Treaties 1969. This Article, like Article 31, may be treated as reflecting customary international law.

5.61 Under Article 32 recourse to *travaux préparatoires* is permitted only in limited circumstances: first, in order to confirm the meaning resulting from Article 31, and second in order to determine the meaning when interpretation according to Article 31 leaves the meaning ambiguous or obscure, or leads to a result which is manifestly absurd or unreasonable.

5.62 In submitting that the general rule of interpretation set out in Article 31 of the Vienna Convention leads to Article IV of the 1891 Convention being given the meaning that the 4° 10' N line stops at the east coast of Sebatik "and goes no further" (additional language added by Malaysia), Malaysia asserts[83] that that interpretation is neither manifestly absurd nor unreasonable. Indonesia for its part believes that its own interpretation of Article IV (whereby the 4° 10' N line is "continued eastward", as stipulated in Article IV itself and without the need for additional language) equally cannot be characterised as manifestly absurd or unreasonable. While each Party rejects as incorrect the other's interpretation, Indonesia assumes that the question of the manifest absurdity or unreasonableness of either Party's interpretation of Article IV is not in issue.

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[83] *Ibid.*, para. 8.13.

5.63 Malaysia also regards the meaning of Article IV as neither ambiguous nor obscure but as being clear[84]. Indonesia equally regards the meaning of Article IV as clear and as neither ambiguous nor obscure. Neither Party, therefore, acknowledges that recourse may be had to the *travaux préparatoires* on the ground of ambiguity or obscurity of the text. The two Parties, however, differ as to what the "clear" meaning of the text is. In these – not unusual – circumstances, recourse to the *travaux préparatoires* in order to shed light on the meaning of Article IV seems inescapable.

5.64 Under Article 32 of the Vienna Convention recourse may be had to *the travaux préparatoires* in order to confirm the meaning which results from the application of the general rule of interpretation in Article 31 of the Vienna Convention. The Parties agree with that statement of principle, although, of course, they differ as to the meaning which in their respective views results from the application of the general rule of interpretation.

5.65 In its Memorial Malaysia states that:

> "The question is whether the preparatory work of the 1891 Treaty revealed any trace of a claim by the Netherlands on behalf of the Sultan or Bulungan to the island of Ligitan and Sipadan and an acknowledgement of that claim by the British Government"[85].

5.66 In Indonesia's submission, that formulation of the question is inaccurate and incomplete. A better formulation is:

> "The question is whether the preparatory work of the 1891 Convention revealed any trace of a claim by the Netherlands to the islands of Ligitan and Sipadan and an acknowledgement of that claim by the British Government, or any trace of a claim by the British Government to the islands of Ligitan and

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[84] *Ibid.*

[85] *Ibid.*, para. 8.15.

Sipadan and an acknowledgement of that claim by The Netherlands Government".

5.67 Malaysia has advanced no suggestion that the islands of Ligitan and Sipadan were specifically mentioned by either side during the negotiation of the 1891 Convention. Indonesia for its part has found no such specific mention of the now-disputed islands in the *travaux préparatoires*. Thus in terms of express references to the islands, neither Party can derive any benefit from the *travaux préparatoires*.

5.68 Instead both Parties have to rely on references in the *travaux* to surrounding circumstances which in their view indirectly confirm the interpretation for which they respectively contend. Thus Malaysia seeks support for its view in the following circumstances (in each case the statement of Malaysia's contention is immediately followed by Indonesia's comment on it, introduced by the word "However"):

(a) The northern limit of Dutch claims was at Batoe Tinagat, on the northern shore of Sibuko Bay, just to the north of Sebatik and a few miles east of Tawau – and more than 40 nautical miles to the west of Sipadan[86].

However, this assertion is factually incorrect: the northern limit of Dutch claims was well north of Batoe Tinagat and extended inland even further north to about 4° 31' N. Moreover, wherever the *northern* limit may have been, it says nothing about the easterly limit of those claims, i.e. to the east of Sebatik. And the very facts that even Batoe Tinagat is located at roughly 4° 14' N latitude and that Dutch claims inland extended to about 4° 31' N, demonstrate that the islands of Sipadan and Ligitan were well to the south of Batoe Tinagat and the northern limit of the mainland area then claimed by The Netherlands. The fact that the Sultan of Boeloengan had actual rights, or at least strong claims, in areas to the north of Batoe Tinagat was acknowledged by the British Government in according the Sultan certain transitional rights in those areas in Article VII of the 1891 Convention[87].

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[86] *Ibid.*, para. 8.16.

[87] See para. 5.30(a), above.

(b) The Netherlands never suggested that Sipadan or Ligitan or any other islands close to the northern shore of Sibuko Bay adhered to the mainland territory of the Sultan of Boeloengan or belonged to the Dutch[88].

However, as already noted, the *travaux préparatoires* contain no specific mention of Sipadan or Ligitan as being either Dutch or British, and the absence of any specific mention of them is thus of neutral significance. That the Sultan of Boeloengan did have offshore possessions is clear from the successive Contracts of Vassalage[89]. Their extent may have been uncertain, like that of the offshore possessions of the Sultan of Sulu (for equally, the *travaux* reveal no specific mention of Sipadan or Ligitan as being among his possessions): it was this uncertainty that the 1891 Convention was intended to resolve once and for all, and did so by providing for the 4° 10' N line "to be continued eastward".

(c) The Dutch negotiators admitted that regions to the east of Batoe Tinagat were under the rule of the Sultan of Sulu[90].

However, the statement of the Dutch representative must be seen in its context. The statement had no relevance to islands more than nine miles from the coast (thus including the islands of Sipadan and Ligitan). It was made in response to a statement by the British Acting Consul-General Treacher which referred to Sulu rule over the territory mentioned in the grant made to Dent and Overbeck. As noted elsewhere[91] the territories mentioned in the grant did not include islands beyond nine miles from the coast. Since the islands of Sipadan and Ligitan are well beyond that distance from the coast, neither Mr. Treacher's remarks nor the response of the Dutch representative to those remarks "in so far as the regions are concerned to the eastward of Batoe Tinagat" referred to the islands now in dispute. Apart from the fact that those islands were not being referred to by either the Dutch or British representatives, the term "regions" used by Mr. Treacher and in the Dutch response suggests that in both cases it was only mainland territory which was under discussion.

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[88] MM, para. 8.16.
[89] See IM, paras. 5.2 and 5.62.
[90] MM, para. 8.17.
[91] See paras. 4.6 *et seq.*, above.

(d) Consideration of the boundary on the coast never extended to cover islands east of Batoe Tinagat, but went no further than Sebatik[92].

However, as is shown by the incident in 1876 involving HNLMS *Admiraal van Kinsbergen* and the island of Mabul[93], whatever may have been the position on the mainland coast, Dutch and Boeloengan assertions of sovereignty extended to islands well to the east of Sebatik, including the island of Mabul which lies fractionally further east of Sebatik than does Sipadan. Moreover, demonstrating that the 1891 Convention did deal with the island of Sebatik, and in particular divided it by a west-east line along the 4° 10' N parallel, all of which Indonesia accepts, does not imply that that line was not "continued eastward" in accordance with the terms of Article IV so as to deal with other islands which had been or might have become the source of territorial disputes: thus, by the adoption of the 4° 10' N line, the Dutch gave up their claims to Mabul and the British acknowledged Dutch rights over Sipadan and Ligitan.

(e) The need for each side to have its own access to the waters lying on its side of the line between Sebatik and the mainland was decisive in leading to the island of Sebatik being divided[94].

However, this again merely demonstrates (which is not denied by Indonesia) that Article IV did deal with the island of Sebatik: what it does not do is show that that was the only island affected by Article IV or why the terms of Article IV – "the line shall be continued eastward" – should not be applied as they stand.

5.69 In so far as Malaysia introduced this last argument by observing that the need for access to waters around Sebatik was, "A relevant consideration in the negotiations", so too would Indonesia note that, as pointed out in Indonesia's Memorial[95], a relevant consideration was the desire to put an end once and for all to Anglo-Dutch territorial disputes in the whole north-east Borneo area[96]. That consideration strongly confirms Indonesia's interpretation of Article IV as continuing the 4° 10' N line eastward so far as necessary for the purposes of the

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[92] MM, paras. 8.18-8.19.
[93] See para. 5.42, and para. 3.67, above.
[94] MM, para. 8.20.
[95] IM, paras. 5.56, 5.58-5.60.
[96] See, paras. 5.30(e) and 5.39, above.

Convention to be achieved which, since the ownership of islands on either side of that line was at the time uncertain, involved its extension at least as far east as to cover the islands presently in dispute.

5.70 The position advanced by Indonesia as to the continuation eastwards of the 4° 10' N line is confirmed by papers found in the Dutch archives. These include the papers of the Dutch delegation in the Joint Commission meetings which led to agreement upon the 4° 10' N starting point on the east coast of Borneo[97]. The day after the conclusion of the Joint Commission meetings Count de Bylandt sent a report to his Foreign Minister [Mr. Hartsen] on 28 July 1889[98]. In this report Count de Bylandt recorded the proposal made by the British Government[99] and accompanied it with "a skeleton map that goes with it" (in fact the Stanford map of 1888, with additional markings)[100]. In the northern part of the map there is an indication of the frontier line asserted by the Dutch, running north from "Batu Tinagat" (Batoe Tinagat) and then curving round to the west. On this map Count de Bylandt marked with a small black cross a point "on about 4° 10' N" that would be the starting point for the frontier. Count de Bylandt noted that this proposal would leave East and West Nanoekhan to The Netherlands but would assign Sebatik to Great Britain: i.e. the dividing line would run through the channel between Sebatik and Nanoekhan – and indeed the map enclosed with Count de Bylandt's report shows pencil lines marking this channel. Count de Bylandt suggested an alternative to this British proposal, in the form of a coastal starting point at about 4° 17' N – a point he indicated on the map with "a small black dash". Count de Bylandt also referred to "a semi-official or personal" suggestion by Admiral Mayne (of the British delegation, and also a director of the BNBC) that the Dutch should keep Batoe Tinagat as an enclave: the sketch map again shows pencil lines indicating such an enclave. The sketch map also shows a pencil line which, starting from the point marked "X" by Count de Bylandt (i.e. at about 4° 10' N), runs eastward through and beyond the island of Sebatik and continuing along the 4° 10' N parallel out to the margin of the map (well beyond the location of Sipadan and Ligitan. When negotiations for the 1891 Convention began the effect upon Sebatik of the agreed 4° 10' N coastal starting point was a matter of considerable interest for the Parties[101].

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[97] The Dutch archives reference is ARA BuZa code 2.05.03, inv. 134.
[98] Annex 21.
[99] See IM, para. 5.20.
[100] Annex 22. An enlargement of the relevant part of the map highlighting the additional markings is also included in Annex 22.

5.71 Also in the Dutch archives[102] is a further relevant map[103]. This is the copy of the *Kaart van het Noordelijk Gedeelte van het Eiland Borneo* apparently used by Count de Bylandt in the negotiations. On it is marked in pencil the 4° 10' N line, again extending out to sea beyond Sebatik (and beyond Sipadan and Ligitan) and out to the margin of the map: in the margin is a manuscript note, which appears to be in Count de Bylandt's handwriting, which in translation[104] reads "10' proposal by Admiral Mayne".

5.72 The first of those maps is not only available in the Dutch archives but a similar map is also available in the Sabah State Archives[105], having formerly formed part of the BNBC's archives. This map also shows a pencil line extending along the 4° 10' N parallel out to the margin of the map. This demonstrates that the continuation eastwards of the 4° 10' N line shown on the Explanatory Memorandum Map was no subsequent invention by the Dutch Government, but was a reflection of an earlier understanding on the part of the negotiators.

5.73 These three maps need to be seen also in the context of the maps already submitted by Indonesia as Maps Nos. 3 and 4 of its Map Atlas. Map No. 3, using a base map published in 1888 for the British North Borneo Company, was an illustration by the Company of a proposal, eventually adopted by the British Government in the negotiations for the 1891 Convention. The significance of this map is explained in Indonesia's Memorial at para. 6.44. In brief, it illustrated by a manuscript dotted line coloured in green, a compromise line running from Broershoek on the Borneo coast (at 4° 10' N) and continuing at sea between the islands of Sebatik and Nanoekhan and extending across Sibuko Bay and out to the margin of the map (well beyond Sipadan and Ligitan) along the 4° N parallel. Although this "compromise" line was not in the event the line agreed, it shows compellingly that during the negotiations the British already envisaged that the line dividing their possessions from the Dutch would continue for a very considerable distance off shore.

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[101] See IM, paras. 5.26-5.31.

[102] The Dutch archives reference is ARA BuZa code 2.05.03, inv. 134.

[103] Annex 23. An enlargement of the relevant part of the map highlighting the manuscript annotation is also included in Annex 23.

[104] In Dutch it reads: "*10' voorstel van Adm. Mayne*".

[105] The Sabah archives reference is Map P51/94.

5.74 The same point is to be made in relation to Map No. 4. It too contains various lines prepared by the British Government in the context of the negotiations for the 1891 Convention[106], one line going north of Sebatik and the other going to the south. *Both* lines are continued out to sea well beyond the eastern coast of Sebatik along their respective parallels of latitude.

5.75 Taken together the five maps referred to in the preceding paragraphs, all of which were used in the course of the negotiations, show a consistent pattern of the line of proposed settlement, wherever it might finally run, being extended out to sea along a relevant parallel of latitude.

5.76 For the foregoing reasons, it is impossible to read into the *travaux préparatoires* of the 1891 Convention any confirmation of the interpretation of Article IV of that Convention contended for by Malaysia. On the contrary, for those reasons and for the reasons set out in Indonesia's Memorial[107], the *travaux préparatoires* confirm that, as contended by Indonesia, the ordinary meaning to be given to Article IV of the 1891 Convention, in particular its central stipulation that the "line shall be continued eastward", in accordance with the general rule of interpretation forming part of customary international law, is that that line continues eastward at least until it reaches and passes to the north of Sipadan and Ligitan, thereby establishing that they belonged to The Netherlands, and now to Indonesia.

Section 4. Dutch Ratification of the 1891 Convention

5.77 Malaysia contends that the Dutch ratification of the 1891 Convention and subsequent Dutch actions implementing the Convention confirm Malaysia's position[108]. Indonesia rejects this contention, both for the reasons already given in Indonesia's Memorial[109] and for the reasons to be given in the present section of this Counter-Memorial in commenting on a number of specific points raised by Malaysia in Section B of Chapter 9 of its Memorial. In short, Malaysia has misunderstood or misrepresented certain key aspects the historical record, which rather, when properly appreciated, fully support Indonesia's position as to the meaning to be given to the 1891 Convention.

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[106] Map No. 4 was included within a group of maps with the hand-written legend on the cover sheet "Borneo - Copies of Maps handed in at the Joint Commission July 1889": PRO Ref. FO 12/86.

[107] Particularly IM, paras. 5.2-5.33.

[108] MM, Chapter 9.

[109] IM, paras. 5.44-5.64.

A. The Map Attached to the 1891 Dutch Explanatory Memorandum

5.78 As Indonesia stated in its Memorial, this map was prepared by the Dutch Government to assist the Dutch Parliament in assessing the contents of the 1891 Convention[110]. The map was not a part of the Convention as such, but was annexed to the Explanatory Memorandum prepared by the Government which accompanied the Bill for ratification of the Convention.

5.79 The map was based on a draft sketch prepared at the Ministry of the Colonies. As Malaysia pointed out, even this preliminary sketch already had a dotted line extending seaward from the coast of Sebatik island. This precisely is the important point: the fact that the line extended beyond the coast, for an undetermined distance offshore along the 4° 10' N parallel, emphasises that it had always been the intention of the parties that the Convention line should also divide any outlying territory (i.e. islands) which might be present in the area, in order to settle once and for all the territorial questions between Great Britain and The Netherlands with respect to northern Borneo. It is immaterial exactly how far offshore the dotted lines extended on the sketch and on the map subsequently produced for the Dutch Parliament. For present purposes it is the extension offshore as such that matters: it confirms that the parties had in mind also the attribution of sovereignty over their respective outlying offshore possessions.

5.80 Both parties during the negotiations used such lines extending offshore[111]. There can be little doubt that they noted these on their respective maps during the meetings of the Joint Commission as for example with the copy of the map personally used by Count de Bylandt during the negotiations which shows the 4° 10' N line drawn in pencil eastward from Sebatik island right across St. Lucia Bay, to the eastern margin of the map[112]. A copy of this map is reproduced in Annex 23. As also noted in para. 5.73 above, a similar map is available in the Sabah State Archives. Since these Archives contain the local papers formerly belonging to the BNBC, it is thus evident th[illegible] the British side also there was an awareness that the line under discussion was going to continue out to sea to the east of Sebatik. Other British maps are to the same effect, as noted in relation to the extended lines on two copies of the 1888 Stanford map mentioned in para. 6.44 of Indonesia's Memorial (Map Atlas, Map Nos. 3 and 4)[113].

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[110] *Ibid.*, para. 5.46.

[111] See paras. 5.70-5.75, above.

5.81 These various maps fully support Indonesia's position, namely:

(a) that the extension eastward and out to sea of whatever line was eventually to be agreed was in the minds of the parties during the negotiations, and

(b) that the Explanatory Memorandum Map, far from being some unilateral invention by the Dutch Government, was fully consistent with the course of the negotiations.

5.82 It should also be stressed that the map annexed to the Explanatory Memorandum was known to the British Government before Great Britain ratified the Convention. Instruments of ratification were exchanged on 22 May 1892. This was some 10 months after the date of the Explanatory Memorandum to which the map was annexed. The British Government had had ample time and opportunity to convey to the Dutch Government its views on this map, should it have found any reason to do so on the basis of the way in which the Dutch Government had depicted its understanding of what had been agreed in the Convention.

5.83 It is also immaterial that the map did not show the islands of Sipadan and Ligitan. In St. Lucia Bay there were many other islets and reefs, on both the British and Dutch side of the line, which were not shown on this map. The base map on which various lines were superimposed was simply the map regarded by the Dutch Government as the most suitable base map to be used for the immediate purpose. Given the "not uncommon" practice referred to earlier of drawing lines of allocation at sea[114], there was no need for the Dutch Government's map to identify all the many individual islands.

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[112] See para. 5.70, above.

[113] See paras. 5.73-5.74, above.

5.84 The consistency of the Dutch position as to the seaward extension of the 4° 10' N line is not only borne out by the 1893 modification of the boundaries of Boeloengan to conform to the 1891 Convention[115] but also by a map published later by a Dutch naval officer who had been the Dutch surveyor on board HNLMS *Banda* and who had in that capacity participated in the survey work undertaken in June 1891 for the purpose of locating the 4° 10' N line on the shores of Sebatik.[116] The officer – R. Posthumus Meyjes (Lt. Cmdr., RNLN) – after his retirement prepared a paper which was published in the Journal of the Royal Netherlands Geographical Society, Second Series, Part XVIII, 1901. It was entitled *"De astronomische plaatsbepalingen ten dienste der hydrographie in Nederlandsch-Indie"* ("The astronomical position-finding for the purpose of hydrographic surveying in the Netherlands Indies"). The article contains a technical review of relevant activities from 1857, including a more detailed account of the years 1891-1894. He attached to his paper a map a copy of which is reproduced at Annex 1. It shows a clear red line (described in the Legend as the boundary line (*"Grenslijn"*)) which continues eastward from Sebatik along the 4° 10' N parallel right up to the edge of the map, well beyond any notional territorial sea.

B. The Explanatory Memorandum

5.85 Malaysia refers in its Memorial to a number of passages in the Dutch Explanatory Memorandum which are said by Malaysia to support its position[117]. Indonesia rejects any such reading of the Explanatory Memorandum. Nothing in it lends any credence to the argument that those islands were henceforth to be regarded as British (let alone Spanish as Malaysia inconsistently also argues), or that they were anything other than attributed to The Netherlands.

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[114] See para. 5.9, above.

[115] See IM para. 5.62; see, also, paras. 5.95 *et seq.*, below.

[116] *Ibid.*, paras. 5.34-5.39.

[117] See MM, paras. 9.10-9.15.

5.86 Malaysia asserts that the Memorandum describes the dispute as concerning "the disputed area between the Tawao and Siboekoe Rivers"[118], and described the dispute exclusively as a land boundary dispute: i.e. "a border arrangement which she [the Dutch Government] had wished for the whole width of Borneo from the Eastern to the Western Coast"[119].

5.87 The Explanatory Memorandum's description of the nature of the dispute does not exclude that offshore islands would also be involved. Clearly, the main practical concerns – and the matter which was primarily in the minds of the members of the Dutch legislature to whom the Memorandum was addressed – were with the land boundary on the mainland of Borneo and navigation rights through the waters around Sebatik, in the very heart of the disputed area of north-eastern Borneo where attention was focussed at the time. But that does not demonstrate that those were the parties' only concerns. As Indonesia has shown[120], it was also intended to put an end to disputes over the extent of the parties' possessions in the area as a whole. As amply demonstrated already by Indonesia, the continuation of the 4° 10' N line seaward beyond Sebatik was fully consistent with (indeed, was necessary to achieve) that overriding objective, with the parties' understandings during the course of the negotiations as shown by the maps which they were using, with the terms eventually agreed in Article IV of the 1891 Convention, and with the parties' subsequent actions connected with the ratification and implementation of the Convention.

5.88 Malaysia also asserts that no mention is made of Ligitan or Sipadan, or indeed any islands further east than Sebatik[121]. This is correct: but it does not establish that those islands were beyond the intended scope of the Convention.

(a) The fact that there was never any specific mention of Sipadan or Ligitan is not at all surprising in view of their tiny size. The same is true of the other islands in the area, including those to the north (i.e. British) side of the 4° 10' N line, but the failure to mention those islands does not call into question their British attribution[122].

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[118] *Ibid.*, para. 9.10.
[119] *Ibid.*, para 9.11(b).
[120] IM, paras. 5.56, 5.58-5.60; and paras. 5.30(a) and 5.39, above.
[121] MM, para. 9.11(a).

(b) The small size of these outer islands, taken together with the principal and immediate practical focus of the parties being on the mainland area and on navigation rights around Sebatik, is amply sufficient to explain the lack of any mention of them, especially since the adoption of a line of attribution meant that there was no need to name them individually: for reference to the "not uncommon" practice of drawing lines of attribution of this kind, see para. 5.9, above.

(c) The Explanatory Memorandum made it clear that the aim of the Dutch Government – which had been achieved in the Convention – was to put an end to Anglo-Dutch disputes in the North Borneo areas. The Memorandum said:

> "...there is now accepted a quite correctly described borderline which makes an end to all difficulties in the future, not only concerning the part of Borneo which was connected with the border dispute but also concerning the whole island"[123].

It was thus clear from the Memorandum itself that "*all* difficulties in the future" had been dealt with and "not only [those] concerning the part of Borneo which was connected with the border dispute", which necessarily means that the question of ownership *of all* possessions in the area had been resolved, even in relation to islands (for to read the reference to the settlement having covered "the whole island" as referring only to the mainland would be to ignore the fact that it demonstrably dealt expressly at least with the island of Sebatik). To read the Memorandum as in some way acknowledging that certain potential disputes had been left open flies in the face of the terms of the Memorandum and the intentions of the two Governments to settle the matter.

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[122] See paras. 5.40-5.41, above.

[123] This is the text quoted by Malaysia, MM, at para. 9.11(c) on the basis of – although slightly different from – its translation of the Explanatory Memorandum, MM, Annex 51, Vol. 3. The text of the same passage, as translated by Indonesia is as follows:
".. a very accurately delineated boundary has now been accepted which obviates all difficulties in the future not only concerning the part of Borneo to which the boundary dispute related but also concerning the whole island." (IM, Annex 77, Vol. 3).

5.89 Malaysia draws attention to "the admitted weakness of the Dutch claim to the disputed area" and Dutch uncertainties as to the extent of their territories[124]. However, it must be recalled that there was a dispute between the British and the Dutch, and it is of the very nature of such a circumstance that the legal positions of *both* sides are less than watertight and are imbued with uncertainty. That is precisely why they sought to arrive at a *compromise* solution and negotiate an agreement to settle the matter, and transform past uncertainty into future certainty.

5.90 This is evident from the passages from the Explanatory Memorandum relied on by Malaysia. Those passages make it clear that, as a matter of fact, certain Bajaus collected forest products in the disputed area without regard to the position of the Sultan of Boeloengan, that there was no document stipulating the boundary between the Sultanates of Boeloengan and Sulu, that it was difficult to determine the extent of the area belonging to Boeloengan, and that the Sultan of Boeloengan's rights in the disputed area were not indisputable. All of this is precisely the sort of uncertainty which is an inherent part of a dispute about territorial possessions. None of it suggests that the Sultan of Boeloengan had no rights in the area, or that the Sultan of Sulu did have clear rights there: both evidently had rights and claims – attended by much uncertainty[125]. As the Explanatory Memorandum says (in the second passage quoted by Malaysia), instead of the previous uncertainty "there is now accepted a quite correctly described borderline which makes an end to all difficulties in the future"[126].

5.91 Moreover, it is to be recalled that even though at the end of the day the Dutch Government was ready to recognise the inherent, objective territorial uncertainty of the situation in the North Borneo area, at the time the Dutch Government nevertheless asserted, and took the appropriate steps to protect, what it conceived of as its territorial rights: any uncertainty was far removed from a renunciation of rights or claims. Thus when in 1878 the Dutch Government heard that concessions awarded to Dent and Overbeck purported to extend to the Sibuko River[127], it ordered the hoisting of the Dutch flag at Batoe Tinagat to show that Dutch territories extended as far north as that location[128]. Again when, in 1879, Dent and Overbeck sought the grant of a Royal Charter (eventually granted in 1881[129]) the Dutch Government protested at what they suspected might involve British encroachment upon Dutch territorial rights, but were assured by the British Government that this was a purely private matter and did not involve any political aspirations by the British Government[130]. Similarly, when in September 1883 the first Governor of North Borneo sought to assert territorial rights by hoisting the North Borneo flag on the south bank of the Sibuko River and establishing a marker on an adjacent tree, the Dutch authorities immediately chopped down the marker tree[131]. Again, when the British Government established Protectorates over territories in northern Borneo, the Dutch Government was quick to assert its concern at the possible territorial implications[132]. For other similar examples of Dutch assertions of sovereignty in the years before 1891, see above at para. 4.16.

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[124] MM, para. 9.11(c).

[125] IM, para. 5.2.

[126] For Indonesia's translation of this passage, see fn.123, above.

[127] See IM, para. 3.28.

5.92 Malaysia finally notes that the Explanatory Memorandum said nothing about any supposed offshore allocation line, and Malaysia quotes a passage describing what the Dutch wanted (and what was agreed) in relation to Sebatik, namely a partition along the 4° 10' N line. That a passage referring to the settlement reached regarding the island of Sebatik had nothing to say about the settlement reached on matters further to the east should be no cause for surprise, and should lead to the drawing of no adverse conclusions.

5.93 At the present time, when Indonesia and Malaysia are in dispute about these two, small and uninhabited islands, it is perhaps easy to note the absence of any mention of them in the Explanatory Memorandum and at the same time to forget the nature and purpose of that Memorandum. It was prepared in order to explain to members of the Dutch legislature the main purposes and achievements of the Convention, so that they would know what was being proposed for retification. It was not prepared as a detailed textual analysis of the Convention. Thus it did not mention the possibility of the later demarcation agreements envisaged in Article V, nor the westward extension of the boundary from the central mountain range to Tandjong-Datoe as provided for in Article III, or the exclusion from the "free navigation" provision of Article VI of the transport of raw material. So far as concerns the eastwards extension of the 4° 10' N line beyond Sebatik, the silence of the Memorandum on what was *at that time* (although not now) at best a secondary matter has to be set against the clear indication in the text of Article IV and in the accompanying map that the line did continue eastwards out to sea.

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[128] *Ibid.*, para. 3.38.
[129] *Ibid.*, para. 3.44.
[130] *Ibid.*, paras. 3.31-3.32, 3.36-3.37 and 7.7.
[131] *Ibid.*, para. 5.4.
[132] *Ibid.*, para. 5.11.

C. The Dutch Act of 20 May 1892

5.94 The language of the Dutch Act by which the 1891 Convention was approved does not (contrary to what Malaysia appears to suggest at para. 9.16 of its Memorial) imply any limitation of the 1891 boundary to the mainland of Borneo. The Act approved the Convention[133]. It thus gave the Convention being approved its correct formal designation, i.e. the Act simply copied the title of the Convention itself (in Dutch). This title (in English, "Convention between Great Britain and The Netherlands defining Boundaries in Borneo"), whether in the Convention or in the Act approving it, does not limit the scope of the Convention in the way Malaysia suggests since the use of neither the term "Boundaries" nor the term "in Borneo" suffices to exclude the insular possessions of the parties[134].

D. Modification of the Boundaries of Boeloengan to Conform to the 1891 Convention

5.95 Malaysia suggests that the variation of the definition of the boundaries of Boeloengan necessitated by the 1891 Convention is prejudicial to Netherlands sovereignty over islands within the domain of the Sultan of Boeloengan.[135] Not only is this not so, but the terms of the variation are precisely to the opposite effect, confirming the position taken by Indonesia.

5.96 The relevant part of the terms of the 1893 variation to the earlier so-called "Contract of Vassalage" reads as follows:

> "... the islands of Tarakan and Nanoekan, and that portion of the island of Sebitik, situated to the south of the above boundary-line described in the

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[133] *Ibid.*, Annex 88, Vol. 3.

[134] See paras. 5.14(b) and (e), above.

[135] MM, para. 9.17.

> *Indisch Staatsblad* of 1892, No. 114, belong to Boeloengan, as well as the small islands belonging to the above islands, so far as they are situated to the south of the boundary-line..."[136].

This specific reference to islands located south of the 4° 10' N line as belonging to the Sultan of Boeloengan, demonstrates clearly:

(a) the Dutch Government's (and the Sultan's) contemporary understanding that the 4° 10' N line extended seaward eastwards from Sebatik, and

(b) the attribution to Boeloengan (and thus to The Netherlands) of all islands lying to the south of that line, and thus including Sipadan and Ligitan which are located south of that line.

As already noted by Indonesia[137], the terms of the variation of the "Contract of Vassalage" were officially communicated to the British Government, which by its silence on the matter evidenced its acquiescence.

Section 5. The 1915 and 1928 Demarcation Agreements

5.97 Malaysia argues[138] that "the 1915 Demarcation Agreement ... definitively confirms the conclusion that the 1891 Treaty did not establish any allocation line in the seas to the east of Sebatik"[139]. Indonesia denies that any such conclusion is to be drawn from the adoption of the 1915 Demarcation Agreement.

5.98 Rather, in Indonesia's submission the 1915 Agreement, together with the later 1928 Agreement (which Malaysia fails to mention in this context)[140], were irrelevant to the application of the 1891 Convention to the islands of Sipadan and Ligitan. Article IV prescribed a parallel of latitude as the line separating British and Dutch possessions. Eastwards out to sea from the mainland coastal terminus of that line at Broershoek there was no need for, nor any possibility of, any demarcation of that line – with the sole exception of the island of Sebatik, which was the only island which the agreed line crossed. Beyond Sebatik, the agreed parallel of latitude was itself wholly sufficient as the agreed location of the line and called for nothing more in the way of physical demarcation pursuant to Article V of the 1891 Convention.

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[136] IM, Annex 91, Vol. 3.

[137] *Ibid.*, para. 5.62; and para. 5.11, above.

[138] MM, paras. 9.18-9.20 and 9.22.

[139] *Ibid.*, para. 9.22.

[140] Except for a passing comment at MM, page 10, fn. 2, that the 1928 agreement amended part of the 1915 agreement in an area which was not relevant to the present case. While the area in question is not relevant to the case, the *fact* that the 1928 agreement, like the 1915 agreement, covered part only of the boundary is relevant as demonstrating the non-comprehensive character of both of them.

5.99 In any event, the 1915 and 1928 Agreements were manifestly only in *partial* implementation of the 1891 Convention. Since therefore they did not purport to deal comprehensively with the boundary between the Dutch and British territories as laid down in the 1891 Convention, the fact that they did not concern areas to the east of Sebatik in no way implies that those areas were excluded from the scope of that Convention.

5.100 It is necessary to look more closely at these Agreements and the background to them.

5.101 Given the state of knowledge at the end of the 19th century, and the difficulties of the terrain on the island of Borneo, the delimitation of the boundary in that region was inevitably complex. Even while the 1891 Convention was being negotiated, arrangements were being made for a survey of the eastern parts of the region in June 1891 by HMS *Egeria*, HMS *Rattler* and the Dutch naval vessel *Banda*[141].

5.102 It is relevant that the original proposal which led to the 1891 Convention was based on agreement that, if the coastal boundary point could be agreed, then the two Governments would:

> "proceed without delay to define, short of making an actual survey, and marking the boundary on the spot, the inland boundary-lines ...[142]".

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[141] See IM, paras. 5.34-5.39.

[142] *Ibid.*, para. 5.18.

Thus the parties understood that, unencumbered by any real knowledge of the terrain to which their delimitation was to apply, the delimitation would essentially lay down principles to be followed.

5.103 In the Convention itself, the parties accordingly recognised from the outset that the boundary described in the Convention would need further elaboration in detail. They made provision accordingly. The starting point for the boundary having been established by Article I of the 1891 Convention on the east coast of Borneo, Articles II and III delimited that boundary line in a westwards direction, and Article IV delimited it eastwards. Article V then provided:

> "The exact positions of the boundary-line, as described in the four preceding Articles, shall be determined hereafter by mutual agreement, at such times as the Netherland and the British Governments may think fit".

Two later agreements – of 1915 and 1928 – were concluded pursuant to this provision, in relation to parts of the 1891 Anglo-Dutch boundary line.

A. Agreement of 28 September 1915

5.104 On 19 November 1910 the Dutch Chargé d'Affaires left with the Foreign Office an aide mémoire[143] explaining that the Netherlands Minister for the Colonies thought it advisable to proceed as soon as possible to the indication on the ground of the frontier, as fixed in the 1891 Convention. All that had been done so far, he said, was the placing of beacons by an Anglo-Dutch Commission on the points where the parallel of 4° 10' N crossed the east coast of Borneo near Broershoek and where it crossed the west and east coasts of the island of Sebatik, and the replacing of those beacons by granite poles[144]. "Both Governments consider these poles as fixing the exact position of the line of the frontier at the coast, as meant in Article V of the Treaty." But, he continued, uncertainty remained as to the actual course of the line of the frontier described in Article II, giving rise to various practical problems along the course of the mainland frontier between Dutch possessions and British

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[143] Annex 24.

[144] IM, paras. 5.34-5.40.

North Borneo. He therefore thought that the time had come to open the negotiations with the British Government mentioned in the 1891 Convention, concerning the indication of the frontier between British North Borneo and the Netherlands territory, and suggested that a mixed Commission be appointed "to indicate the frontier on the ground, to describe it and to prepare a map of same".

5.105 In April and May 1912 the Dutch and British authorities appointed Commissioners to delimit on the spot the boundary between The Netherlands' possessions in Borneo and British North Borneo. The Boundary Commissioners – Messrs. Schepers and Vreede for The Netherlands, and Bunbury and Keddell for Great Britain – carried out their work "in the neighbourhood of the frontier" from 8 June 1912 to 30 January 1913. They prepared and jointly signed their Report (in English only) at Tawau, British North Borneo, on 17 February 1913[145].

5.106 So far as concerns that part of the boundary now in question, paragraph 3 of the Boundary Commissioners' Report stated that they had:

> "determined the boundary between the Netherland territory and the State of British North Borneo, as described in the Boundary Treaty supplemented by the interpretation of Article 2 of the treaty mutually accepted by the Netherland and British Governments in 1905 as taking the following course:
>
> (1.) Traversing the island of Sibetik, the frontier line follows the parallel of 4° 10' north latitude, as already fixed by Article 4 of the Boundary Treaty and marked on the east and west coasts by boundary pillars[146].
>
> (2.) Starting from the boundary pillar on the west coast of the island of Sibetik, the boundary follows the parallel of 4° 10' north latitude westward until it reaches the middle of the channel, thence keeping a mid-channel course until it reaches the middle of the mouth of Troesan Tamboe.
>
> (3.) ......"

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[145] Annex 25.

[146] These pillars had been placed previously (during the survey visit by HMS *Egeria* and *Rattler* and the Dutch vessel *Banda* in 1891 (IM, para. 5.37) and in 1901 by HMS *Waterwitch* and the Dutch naval vessel *Makasser* (IM, para. 5.40), and not by the 1912/1913 Boundary Commission; see paragraph 2 of the Commission's Report.

5.107 Thus the Boundary Commissioners (a) began their work on the east coast of the island Sebatik; (b) next went westwards across to the west coast of the island; (c) then to the mid-channel of the waters lying to the west of the island; (d) then along that mid-channel to the mouth of the River Tamboe; and (e) thereafter by the route described into the island of Borneo. The line joining points (a), (b) and (c) was simply described as "follow[ing] the parallel of 4° 10' north latitude".

5.108 The Boundary Commissioners' Report, although clearly prepared in the context of the 1891 Convention, did not expressly say that their work had been undertaken in the context of Article V of the Convention. The Report was submitted to the two Governments. On 28 September 1915 they signed an "Agreement between the United Kingdom and The Netherlands relating to the Boundary between the State of North Borneo and the Netherland Possessions in Borneo"[147]. In that Agreement they recorded that they:

> "agreed in a spirit of mutual goodwill to confirm the joint Report with the accompanying map prepared by their respective Commissioners in accordance with Article 5 of the Convention signed at London on the 20th June, 1891, ... and relating to the boundary between the State of North Borneo and the Netherland possessions in the island".

The two Governments "hereby confirm[ed] the aforesaid joint Report and map, as signed by their Commissioners at Tawau on the 17th February, 1913", the text of which was set out in the body of the Agreement.

5.109 That Agreement, and the Boundary Commissioners' Report and map incorporated into it, by their terms related only to part of the boundary between the Dutch and British territories in Borneo – namely, the island of Sebatik and a particular area of the eastern part of the mainland of Kalimantan on the island of Borneo. The reason for dealing with Sebatik in this way was simply that the island was shared – no such reason was relevant for any other islands. The sector of the boundary dealt with is indicated by the blue line on the sketch map at Annex 26. So far as their work on the island of Sebatik was concerned, the Boundary Commissioners of 1912-1913 made no new contribution of substance, doing no more than acknowledge the pre-existing boundary markers and repeat the 4° 10' N boundary line; their substantive work thus only concerned parts of the mainland boundary, in respect of which they confirmed that they had agreed on the survey and the establishment of boundary markers in some parts of the mainland of Kalimantan, based on the general mapping indications given in the 1891 Convention.

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[147] IM, Annex 118, Vol. 3.

5.110 Nothing in Article V of the 1891 Convention precluded partial specification of the boundary. On the contrary, it stipulated that the exact positions of the boundary line as described in the Convention was to be "determined hereafter by mutual agreement, at such times as the Netherland and British Government may think fit": the use of the plural "such *times*" shows that action could be taken under the Article at different times, in relation to different parts of the boundary. It was left to the discretion of the two Governments to decide when and how to implement Article V: "at such times as [they] may think fit".

5.111 Accordingly, the fact that the 1915 Agreement, and the 1913 Report incorporated into it, said nothing about the boundary eastwards from the island of Sebatik, i.e. out to sea in the direction of, and to the north of, Sipadan and Ligitan, carries with it no implication that the 1891 Agreement did not make provision for the eastward course of the boundary out to sea.

5.112 Moreover, the nature of the 1891 and 1915 agreements called for no further action to the eastward of Sebatik by which the "exact positions of the boundary-line ... shall be determined". Eastward from the island of Sebatik the line was simply to follow the parallel of 4° 10' N latitude; since there were no islands to the east which that parallel would cross, there was no need for any further specification of the line, and the stipulation that it followed a particular parallel of latitude (4° 10' N) removed any further need for more precise delimitation or for demarcation. This is consistent with the Dutch Chargé d'Affaires' initial suggestion in 1910 for a demarcation of the boundary, when he referred to the then-existing uncertainties as having given rise to various practical problems[148]: no such "practical problems" would arise in applying a straight parallel of latitude at sea.

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[148] See para. 5.104, above.

5.113 Nor, given the maritime nature of the area, was there any practical opportunity for erecting boundary pillars at appropriate places. To the west of Sebatik, however, in Dutch and British internal waters, there was a practical need to specify exactly the position of the boundary, and this was accordingly done by reference to the mid-channel of the river waters in that area.

B. Convention of 26 March 1928

5.114 The parties acknowledged that partial, and successive, detailed delimitations of the boundary set out in the 1891 Convention were permitted by concluding, on 26 March 1928, a further "Convention between His Majesty in respect of the United Kingdom and Her Majesty the Queen of the Netherlands respecting the Delimitation of the Frontier between the States in Borneo under British Protection and Netherlands Territory in that Island"[149]. The Convention was subject to ratification: ratifications were exchanged at The Hague on 6 August 1930.

5.115 In the Convention the parties recorded that they were "desirous of further delimiting part of the frontier established in Article III of the Convention signed at London on the 20th June, 1891", and went on to agree that the boundary as defined in Article III of the Convention was to be further delimited between the summits of the Gunong Api and of the Gunong Raya. The sector of the boundary dealt with by the 1928 Convention concerned only part of the boundary between Sarawak and Dutch Borneo, and is indicated by the red line on the sketch map at Annex 26.

5.116 Again, it is apparent that the 1928 Convention was another partial delimitation of the frontier established by the 1891 Convention. This is clear both from the substance of the Convention, but also from its terms which refer to the wish of the parties further to delimit "*part of* the frontier established in article III of the [1891] Convention". Like the 1915 Agreement, it in effect supplemented the 1891 Convention by giving greater precision to the delimitation of part of the boundary expressed in it: in the officially published *Index of British Treaties 1101-1968*[150] it is listed as having "supplemented" the 1891 Convention.

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[149] IM, Annex 125, Vol. 4.

[150] Annex 27.

5.117 Thus, as is evident from the sketch map at Annex 26, the 1915 and 1928 agreements together delimit only part of the boundary established by the 1891 Convention. They do not even demarcate the whole of the land boundary on the mainland of Borneo, to the west of Broershoek. That fact does not in any way call into question the validity or effectiveness of the mainland land boundary in those undemarcated stretches; similarly the fact that the two Agreements do not in terms deal with the disposition of sovereignty to the east of Sebatik is no argument for denying the validity or effectiveness of the 1891 Convention in respect of those eastern areas - maritime areas in which no further demarcation was necessary or possible beyond the straightforward stipulation in the 1891 Convention that the relevant line followed a specified parallel of latitude, namely 4° 10' N.

5.118 The territorial dispositions in the areas not covered by the 1915 and 1928 Agreements remain as determined by the 1891 Convention. In the area relevant to the present proceedings, that boundary remains effectively along the parallel of 4° 10' N latitude, eastward from the island of Sebatik, and therefore running to the north of the islands of Sipadan and Ligitan.

CHAPTER VI

THE ABSENCE OF TITLE OVER THE ISLANDS VESTING IN SPAIN AND THE UNITED STATES

Section 1. Introduction

6.1 Indonesia has shown in Chapter III that there is no evidence that the Sultan of Sulu ever possessed an original title to Ligitan or Sipadan which it could have passed on to either the BNBC or to Spain. Following from this, Indonesia has also shown in Chapter IV that Malaysia's first chain of title, according to which sovereignty over the islands of Ligitan and Sipadan was acquired by the BNBC under the 1878 grant to Dent and Overbeck, cannot be sustained.

6.2 In this Chapter, Indonesia will demonstrate that Malaysia's alternative chain of title – that the islands were passed from the Sultan of Sulu to Spain, thence to the United States and finally to Great Britain in 1930 – fares no better. Once again, none of the relevant instruments even remotely suggests that the islands formed part of the Sultan's dominions or those of Spain. Since Spain never possessed sovereignty over the islands, it had no title which it could have relinquished to Britain under the 1885 Protocol[1] or subsequently have passed on to the United States under the 1898 and 1900 treaties. The United States, in turn, had no title over the islands that could have been transferred to Great Britain under the 1930 Anglo-U.S. Convention.

Section 2. The Absence of Spanish Title over the Disputed Islands

6.3 Any Spanish title over the islands of Ligitan and Sipadan would necessarily have derived from a previous title vested in the Sultan of Sulu. Malaysia argues that Spain allegedly acquired title from the Sultan by virtue of the Capitulations of Protection and Commerce of 23 September 1836, the Convention of 19 April 1851 and the Protocol

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[1] See, paras. 4.24-4.26.

confirming the Bases of Peace and Capitulation of 22 July 1878[2]. Under this thesis, Malaysia contends that the 1891 Convention "could not have had any consequence for islands which at that time belonged to Spain"[3].

6.4 With respect to the 1836 Capitulations, this document contained a description of sufficient clarity to show that the islands of Ligitan and Sipadan could not have been included in the territories which were deemed to have been ceded to Spain by the Sultan. The Capitulations described the area of Spanish rights as extending:

> ".... from the western extremity of Mindanao to Borney and La Paragua [Palawan], with the exception of Sandacan and the other territories tributary to the Sultan on the mainland of Borney"[4].

6.5 A glance at Map 6.1 (a reproduction of Map 7.2 facing page 140 of Indonesia's Memorial) reproduced opposite page 112 shows that this definition could not have included the islands of Ligitan and Sipadan which lie well to the south and west of the places mentioned in the Capitulations. Indeed, the definition included in the Capitulations referred to the Sulu Archipelago proper, which – according to an entry in the Spanish *Enciclopedia Universal Ilustrada Espasa* published in 1927 – was situated between the island of Mindanao and North Borneo, approximately between the latitudes of 4° 40' N and 8° N[5]. The islands of Ligitan and Sipadan fell well to the south of this area and thus could not have been considered to form part of the territories ceded by the Sultan of Sulu to Spain. Moreover, as explained in Chapter III, there is absolutely no evidence that the Sultan ever held sway over either Ligitan or Sipadan. Consequently, the alleged basis on which Spain's title is said to have vested is defective at the outset.

6.6 Moreover, neither the 1851 Convention nor the 1878 Protocol support Malaysia's contention that Ligitan and Sipadan were part of the territories which Spain acquired from the Sultan of Sulu. The 1851 Convention provided for the incorporation of "the Island of Sooloo with all its dependencies" with the Crown of Spain (Article I), and referred to "the territory of Sooloo and its dependencies, as a part of the Archipelago belonging to the Spanish

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[2] A copy of these documents may be found at IM, Annex 9, Vol. 2 and MM, Annexes 4 and 12, Vol. 2.
[3] MM, para. 8.22.
[4] IM, Annex 9, Vol. 2.
[5] *Ibid.*, para. 7.24 and Annex 124, Vol. 4.

Government"(Article II), to the "Island of Sooloo and all its dependencies, being incorporated with the Crown of Spain" (Article III), and to "The Island of Sooloo, and its dependencies, being declared an integral part of the Philippine Archipelago which belongs to Spain" (Article VI).

6.7 By the 1878 Protocol, Sulu "declare[d] as beyond discussion the sovereignty of Spain over all the Archipelago of Sulu and the dependencies thereof" (Article I). Both these treaties dealt with Sulu (either the island or the archipelago of that name) and its dependencies. Such language does not establish that the particular islands of Sipadan and Ligitan were included within the Sulu territories which were placed under Spanish sovereignty; nor has Malaysia produced any evidence leading to that conclusion. Mere assertion is not evidence.

6.8 As discussed in Chapter IV, in 1885 a Protocol was concluded between Great Britain, Spain and Germany. For present purposes, the relevant articles of the Protocol are Articles I and II which read as follows:

> " I. The Governments of Great Britain and Germany recognize the sovereignty of Spain over the places effectively occupied as well as over those places not yet so occupied, of the archipelago of Sulu (Jolo'), whereof the boundaries are determined in Article II.
>
> II. The Archipelago of Sulu (Joló), conformably to the definition contained in Article 1 of the Treaty signed the 23rd of September 1836, between the Spanish Government and the Sultan of Sulu (Joló) *comprises all the islands which are found between the western extremity of the island of Mindanao on the one side, and the continent of Borneo and the Island of Paragua (Palawan) on the other side, with exception of those which are indicated in Article III.* It is understood (entendu) that the island of Balabac and of Cagayan-Joló form part of the Archipelago"[6].

6.9 As can be seen from Map 6.1, this definition clearly concerned, and mentioned specifically, islands which were located well to the north and east of Ligitan and Sipadan. Quite evidently, Spain did not consider that either of the disputed islands formed part of its domains.

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[6] Emphasis added. This translation of the Protocol was prepared by the British Foreign Office. It is contained in IM, Annex 33, Vol. 2.

6.10 At several junctures, Malaysia's Memorial itself confirms that Spain showed no interest over the islands[7]. For example, Malaysia claims that Spain was quite indifferent to alleged (but not demonrtrated) British activities on Ligitan and Sipadan[8]. Elsewhere, Malaysia asserts that, with respect to the question of which islands appertained to British North Borneo after 1878, Spain was not interested[9]. And Malaysia even goes so far as to quote from a 1903 report by a local official in North Borneo which stated with respect to the islands that "the Spanish have never claimed or exercised any sovereign rights over them as far as I know"[10].

6.11 Spanish indifference to the islands of Ligitan and Sipadan can be readily explained. Spain was under no illusion that it possessed sovereignty over either island – hence Spain's lack of interest in the 1891 Convention which settled the territorial status of Ligitan and Sipadan once and for all between The Netherlands and Great Britain.

6.12 If any further confirmation of the lack of Spanish title over the disputed islands is necessary, it is provided by examining the territories that Spain ceded to the United States following the Spanish-American War. As the next section will show, neither island fell within the scope of the territories which Spain relinquished to the United States pursuant to the 1898 and 1900 treaties.

6.13 In Indonesia's submission, the only possible conclusion is that Spain's claims – and presumed rights to islands off the coast of North Borneo – only concerned the Philippine Archipelago, while the islands of Ligitan and Sipadan were never part of the Spanish – or Sulu – possessions; nor had they ever been so claimed. This is not surprising since the disputed islands fell under Dutch sovereignty. Naturally, The Netherlands had not been a party to the various treaties regulating Spanish and British possessions in the area because its rights and interests were not concerned.

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[7] MM, paras. 5.19, 5.20(c), 5.21 and 5.30.

[8] *Ibid.*, para. 5.19.

[9] *Ibid.*, para. 5.20(c).

[10] *Ibid.*, para. 5.30.

Section 3. The Absence of U.S. Title Following the 1898 and 1900 Treaties

6.14 Malaysia's argument continues with a section entitled "The Recognition by the United States (as Successor to Spain) of British Rights to North Borneo, including the Disputed Islands"[11]. In this section, Malaysia abandons its argument that title over Ligitan and Sipadan was transferred by the Sultan of Sulu to the BNBC and Great Britain in favour of the thesis that title remained with Spain up to the 1898 and 1900 treaties at which time it was passed to the United States. Malaysia tries to by-pass the inconsistencies of its legal arguments by asserting that "there was no discussion of which islands fell on which side of the three marine league line as between Britain and Spain. Spain was evidently willing to allow the administrative *status quo* in relation to the offshore islands to remain unchanged"[12]. Quite apart from the fact that there was no British administration over the disputed islands at the time, this last statement seems to indicate that Spain, which was the legitimate sovereign over the territory according to Malaysia's alternative thesis, accepted – for unspecified reasons – that another government carry out the administration of that territory.

A. The 1898 and 1900 Treaties Did Not Include Ligitan and Sipadan

6.15 The fact that, according to Malaysia, Spain retained title over the disputed islands is the necessary link to include the U.S. Government within Malaysia's alternative chain of title. Indonesia does not dispute that Spain ceded the Philippine Archipelago to the United States through the Peace Treaty of 10 December 1898, and that on 7 November 1900 the parties signed a further treaty for the cession of the islands lying outside the boundary line set forth in Article III of the 1898 Treaty. However, there is no evidence that the Philippine Archipelago, as defined in these treaties, extended as far south so as to include the islands of Ligitan and Sipadan.

6.16 Malaysia admits that the 1898 Treaty did not include the disputed islands. However, it alleges that "The 1900 Convention was understood as covering Ligitan and Sipadan, amongst other islands lying between the three nautical mile limit and the line originally established by the 1898 Treaty"[13]. Quite remarkably, Malaysia does not produce any evidence to substantiate this ambitious assertion.

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[11] *Ibid.*, paras. 5.21-5.44.

[12] *Ibid.*, para. 5.21.

6.17 As will be recalled, the 1900 Treaty contained only one provision, which read as follows:

> "SOLE ARTICLE
> Spain relinquishes to the United States all title and claim of title, which she may have had at the time of the conclusion of the Treaty of Peace of Paris, to any and all islands belonging to the Philippine Archipelago, lying outside the lines described in Article III of that Treaty and particularly to the islands of Cagayan Sulú and Sibutú and their dependencies, and agrees that all such islands shall be comprehended in the cession of the Archipelago as fully as if they had been expressly included within those lines"[14].

6.18 The language of this provision is unambiguous: the 1900 Treaty only referred to islands forming part of the Philippine Archipelago lying outside of the line agreed to in the 1898 Treaty. In particular, the 1900 Treaty provided that the islands of Cagayan Sulu, Sibutu and their dependencies were amongst the territories ceded by Spain to the United States. According to the plain and ordinary meaning of this provision, Ligitan and Sipadan were patently not considered part of the Philippine Archipelago; nor could they be viewed, given their position, as "dependencies" of Cagayan Sulu and Sibutu which lay far to the north.

6.19 Consequently, the official position of the Dutch Ministry of Foreign Affairs, recorded in correspondence exchanged with the Dutch envoy in Spain, was that the 1900 Treaty did not concern the Netherlands East Indies' possessions, since the islands of Cagayan Sulu and Sibutu were not located in proximity of the Dutch territories, but were situated "between BRITISH NORTH BORNEO and the PHILIPPINES"[15].

6.20 A mere glance at Insert 9 on page 44 of Malaysia's Memorial or at the map reproduced opposite as Map 6.1, shows how far away Ligitan and Sipadan lay from the islands of Cagayan Sulu and Sibutu; certainly too far to be conceivably referred to as being related to them in any way. Moreover, the fact that prior to the 1898 and 1900 treaties Spain had never

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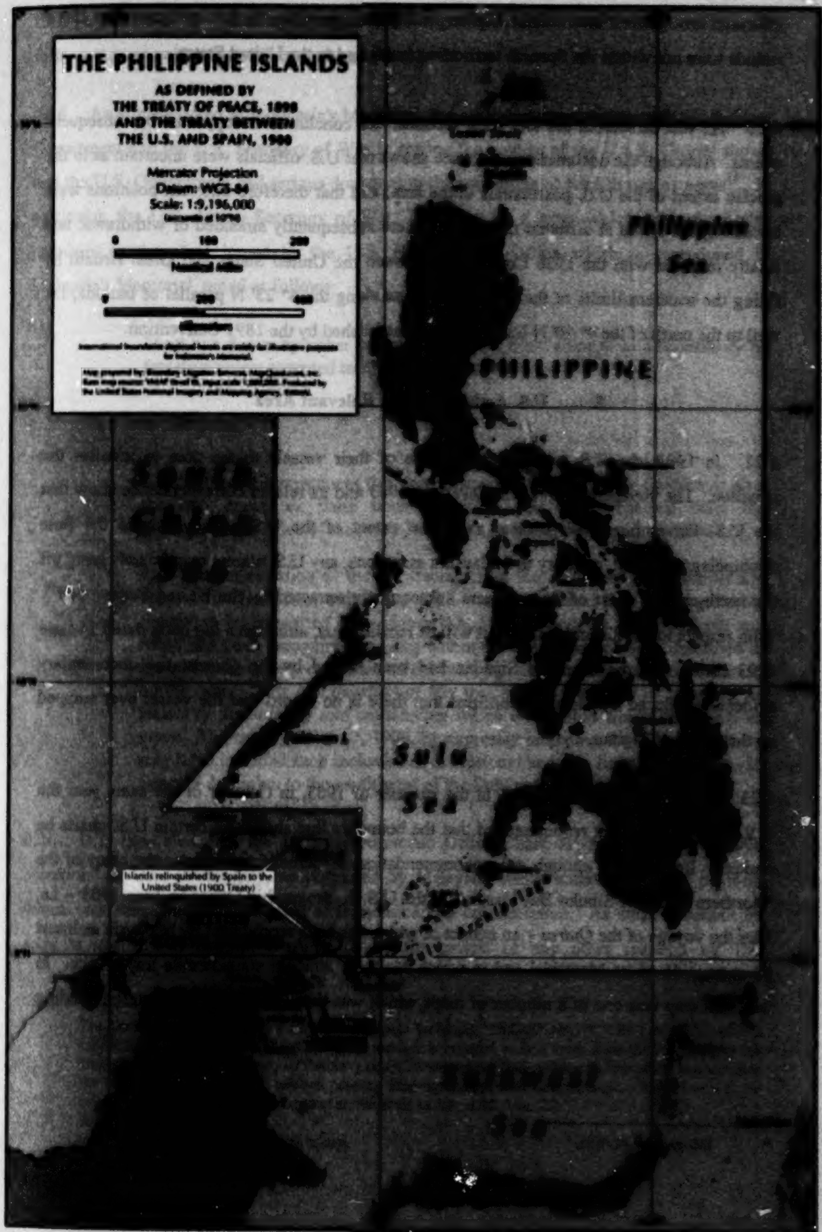
[13] *Ibid.*, para. 5.25.

[14] IM, Annex 94, Vol. 3.

[15] See letter from Van Weede to the Dutch Minister of Foreign Affairs of 3 March 1900, at Annex 28 and letter from the Dutch Minister of Foreign Affairs to the Dutch envoy in Madrid, 19 April 1900, at Annex 29, Vol. 2.


THE PHILIPPINE ISLANDS
AS DEFINED BY
THE TREATY OF PEACE, 1898
AND THE TREATY BETWEEN
THE U.S. AND SPAIN, 1900
Mercator Projection
Datum: WGS-84
Scale: 1:9,196,000
0
100
200
Nautical Miles
0
200
400
Kilometers
Philippine Sea
PHILIPPINE
South China Sea
Sulu Sea
Sulu Archipelago
Sea
Islands relinquished by Spain to the United States (1900 Treaty)

Map 6.1

indicated any interest over either Ligitan or Sipadan provides further evidence that these islands were not within the Spanish territories transferred to the United States.

6.21 As will be seen in the following sections, this conclusion is supported by subsequent events. Although the documentary evidence shows that U.S. officials were uncertain as to the precise extent of the U.S. possessions in the area, and that therefore different positions were tentatively advanced at different times, these were subsequently amended or withdrawn, and finally resolved with the 1930 Convention between the United States and Great Britain by fixing the southern limits of the U.S. possessions along the 4° 23' N parallel of latitude, i.e. well to the north of the 4° 10' N line of latitude established by the 1891 Convention.

B. U.S. Activities in the Relevant Area

6.22 In 1903, the U.S. authorities sent one of their vessels to the area to monitor the situation. The voyage of the U.S.S. *Quiros* in 1903 and its related correspondence show that the U.S. Government was unclear as to the extent of the U.S. possessions in the Sulu Archipelago and that, contrary to Malaysia's assertions, any U.S. claims over islands lying off the north-eastern coast of Borneo were subsequently retracted by the United States itself[16]. With respect to the disputed islands, it will be recalled that, although a log book dated 24 June 1903 shows that the island of Sipadan had been visited by the *Quiros*, the documentary evidence produced by Malaysia confirms that there is no record that the vessel ever stopped on the island of Ligitan.

6.23 Whatever the U.S. position in the summer of 1903, in October of the same year the U.S. Navy Department recommended that the boundary line shown on certain U.S. charts be omitted. Interestingly enough, this recommendation concerned in particular the chart of the "Northern Shore of Sibuko Bay" issued by the U.S. Hydrographic Office in June 1903 – i.e. after the voyage of the *Quiros* – an extract of which has been reproduced by Malaysia as Insert 10 at page 46 of its Memorial and to which Malaysia attaches considerable importance. In fact, this map was one of a number of maps which was withdrawn from distribution pending final resolution of the boundary situation following the instructions of the U.S. Navy[17]. It follows that no evidentiary value can be attached to it.

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[16] IM, paras. 7.41-7.51.

6.24 As already noted in Indonesia's Memorial, the correspondence between the U.S. State Department and the U.S. Secretary of War following the voyage of the U.S.S. *Quiros* shows that the U.S. Government had serious doubts as to the soundness of lines drawn *ex parte*[18]. In particular, the U.S. Acting Secretary of War, John Hay, in a letter which appears to refer precisely to the chart issued by the U.S. Hydrographic Office which is reproduced in Malaysia's Memorial, noted as follows:

> "Any line drawn by either part in interest for itself alone would necessarily be tentative unless assented to by the other party".

6.25 The letter continued:

> "Under these circumstances this department is unable to either confirm or alter the line drawn ex parte upon the chart you have received from the Hydrographic Office of the Navy Department. It may be remarked, however:-
>
> "1. The prolongation of the red tracing from the east-ward of Sibutu to and around Sipadan Island and thence north-wardly to Darval Bay would probably require to be supported by evidence that Sipadan and the included keys and rocks had been recognised as lying within the dominions of Sulu described in the conventions between Spain on the one hand and Great Britain and Germany on the other. *This is a question of fact which the department of state has no means of determining and considering which an opinion would be mainly ex parte.* The treaty of Nov. 7, 1900, by expressly including the Island of Sibutu may have intended such inclusion as exceptional and as a limit to the claims of Spanish dominion to the south-west of the Sulu group"[19].

6.26 It is thus clear that the 1903 Hydrographic Office Chart, far from being a "public assertion" of U.S. sovereignty, as suggested by Malaysia, was a tentative internal position which was subsequently withdrawn after more careful consideration. As such, it cannot be seen as an official document which called for protest or any other reaction by The

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[17] The back of the map carries a number of stamps including "15826/5 NAVY DEPT SECRETARY'S OFFICE Rec'd JUL 30 1903". This stamp number is referred to in a letter from the President of the General Board to the Secretary of the Navy dated 25 November 1903 to identify one of the charts where the boundary line should be omitted pending final agreement with Great Britain. The letter and the relevant section of the back of the map are attached as Annex 30, Vol. 2.

[18] IM, para. 7.41.

[19] IM, Annex 104, Vol. 3. Emphasis added.

Netherlands, particularly in light of the fact that this chart was withdrawn shortly after its publication. At most, the line defined on the chart proves only that the U.S. authorities were confused as to the limits of the former Sulu possessions. It is also worth recalling, as noted in Indonesia's Memorial, that according to U.S. sources, the uncertainty over the official position to be taken by the U.S. Government regarding the boundary continued at least until October 1906. In the meantime, the Secretary of War ordered that all official maps of the area contain a reference to the 1885 Protocol, the 1898 Peace Treaty and the 1900 Treaty[20].

6.27 The 1907 U.S.-British exchange of notes deserves a separate mention. As explained in Indonesia's Memorial, this exchange consisted of a temporary arrangement whereby the United States waived in favour of the BNBC the administration of certain islands located "to the westward and southwestward of the line traced on the map which accompanied Sir H. M. Durand's memorandum of the 23rd of June, 1906"[21]. Any such waiver, however, was without prejudice to the issue of sovereignty.

6.28 The islands of Ligitan and Sipadan could not have been covered by the 1907 exchange of notes, nor, for that matter, by any other previous arrangement or instrument, for the simple reason that they formed part of the territorial possessions attributed to The Netherlands by virtue of the 1891 Convention. After that date, the islands and land territory lying south of the 4°10' N latitude were under Dutch sovereignty. Again, no protest from the Dutch Government was called for since its sovereign rights were not involved[22].

6.29 As for the map attached to the 1907 Exchange of Notes, it was also not opposable to The Netherlands since the Dutch Government was never aware of it and the map, in any event, did not purport to deal with territorial limits or sovereignty.

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[20] *Ibid.*, Annex 111, Vol. 3.

[21] *Ibid.*, Annex 113, Vol. 3.

[22] It should be noted, incidentally, that, contrary to what is stated in para. 5.41 of Malaysia's Memorial, the 1907 exchange of notes was not published "at the time" by the United States and Britain. As stated in MM, para. 5.41, fn. 42, the exchange of notes was not published by the United States until 1910. As to Great Britain, Vol. 102 of the British and Foreign State Papers referred to at MM, para. 5.41, fn 43, was not published until 1913, i.e. 6 years after the exchange of notes.

C. The 1930 Convention Confirmed that the Islands Did Not Belong to the United States

6.30 As pointed out in Indonesia's Memorial, whatever uncertainty might have existed with regard to the respective U.S. and British possessions in the area, the Convention of 2 January 1930 between Great Britain and the United States, and the resulting boundary line, resolved the situation once and for all.

6.31 The 1930 Convention confirmed that the islands forming the subject matter of the present dispute did not belong to the United States. As can be seen from Map 6.2 on the following page (a reproduction of Map 7.3 of Indonesia's Memorial), the line resulting from the 1930 Convention allocated to the United States, as part of the former Spanish possessions, islands lying well to the north and east of Ligitan and Sipadan. It is therefore obvious that the disputed islands were not attributed to the United States as a result of this Convention.

6.32 Malaysia alleges, however, that, pursuant to the 1930 Convention, the United States relinquished sovereignty over islands lying south and west of the delimitation line in favour of the State of North Borneo. The implication is that Ligitan and Sipadan are included in these islands so relinquished. Malaysia also attaches significance to the fact that the Convention provoked no reaction from The Netherlands.

6.33 Article I of the Convention described the boundary line seperating the islands belonging to the United States to the islands belonging to British North Borneo. Article III provided as follows:

> "All islands to the north and east of the said line and all islands and rocks traversed by the said line, should there be any such, shall belong to the Philippine Archipelago, and all islands to the south and west of the said line shall belong to the State of North Borneo"[23].

6.34 While it is true that this provision stated that all islands situated south and west of the line defined in Article I belonged to the State of North Borneo, this language cannot be interpreted in isolation since it contained no geographical limits to Britain's possessions.

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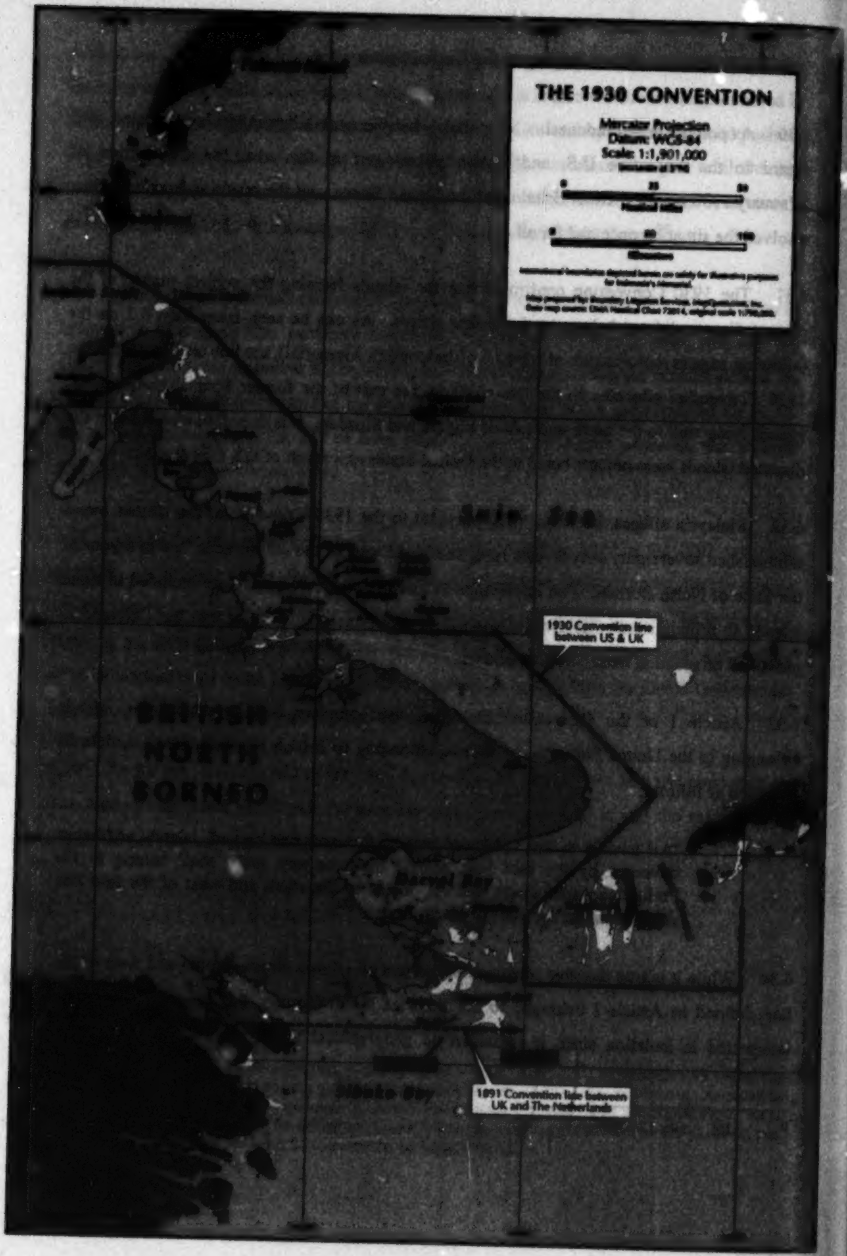
[23] IM, Annex 124, Vol. 4.


THE 1930 CONVENTION
Mercator Projection
Datum: WGS-84
Scale: 1:1,901,000
0
25
50
Nautical miles
0
50
100
Kilometers
Sulu Sea
BRITISH NORTH BORNEO
Darvel Bay
Sibuko Bay
1930 Convention line between US & UK
1891 Convention line between UK and The Netherlands

Map 6.2

Under Malaysia's reading of the Convention, any islands – whether undisputedly Dutch or not – lying to the south and west of the Convention line belonged to Great Britain. The fact of the matter is that Article III of the 1930 Convention must be interpreted within the context of the other international instruments that had been concluded by the concerned parties in the area, in particular the 1891 Convention between Great Britain and The Netherlands.

6.35 The provisions of the 1930 Convention were without prejudice to the position of The Netherlands as to which the Convention was *res inter alia acta*. The Convention could not have disposed of islands which already belonged to another State – i.e. The Netherlands – by virtue of a previous convention entered into by Great Britain. As the disputed islands had been allocated to The Netherlands as a result of the 1891 Convention, which fixed the limits of the respective British and Dutch possessions along the 4° 10' N latitude east of the island of Sebatik, neither the United States nor Great Britain had sovereignty over Ligitan and Sipadan.

6.36 In summing up the situation, it is appropriate to recall the words of Judge Huber in the *Island of Palmas* case. In disposing of the argument that the United States had title to the island in question under the Treaty of Paris of 1898, Judge Huber stated: "It is evident that Spain could not transfer more rights than she herself possessed"[24] (*nemo dat quod non habet*). The disputed islands of Ligitan and Sipadan could not have been transferred by Spain to the United States because Spain had no title over them. By the same reasoning, they could not have been transferred by the United States to Great Britain in 1930.

Section 4. Conclusions as to Malaysia's Arguments Based on Conventional Title Over the Disputed Islands

6.37 In light of the foregoing analysis, Malaysia's arguments that title over the islands of Ligitan and Sipadan was acquired through a series of treaties and other conventional instruments – whether based on a chain of title passing through the BNBC and Great Britain or on a chain of title passing through Spain, the United States and Great Britain – must be rejected for the following reasons:

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[24] *RIAA*, p. 829, at p. 842.

(a) The 22 January 1878 grant by the Sultan of Sulu to Messrs. Dent and Overbeck was restricted to islands lying within nine nautical miles from the coast of North Borneo and thus did not concern the disputed islands which lie beyond this distance from the coast;

(b) The Royal Charter granted to the BNBC in November 1881 and the 12 May 1888 agreement instituting the State of North Borneo simply confirmed the geographic scope of the 1878 grant of the Sultan of Sulu and thus did not include the disputed islands;

(c) Article III of the Protocol signed in March 1885 by Great Britain, Germany and Spain concerned the islands of the Sulu Archipelago and other islands belonging to the Sultan of Sulu, including those which lay within nine nautical miles from the coast of North Borneo. The disputed islands fall more than nine nautical miles from the coast and the definition of the Sulu Archipelago in Article II of the Protocol confirmed the fact that the Sulu Archipelago did not comprise either Ligitan or Sipadan;

(d) At no time did Spain ever claim the disputed islands or exhibit any interest in them;

(e) The Treaty between the United States and Spain of 7 November 1900 concerned the islands of Cagayan Sulu and Sibutu and their dependencies and therefore could not have included the disputed islands which were geographically remote from the areas covered in the Treaty;

(f) The statement by the Sultan of Sulu of 22 April 1903, notwithstanding the doubts concerning its legal validity, did not identify the disputed islands as part of the Sulu possessions which were deemed to be part of the 1878 grant by the Sultan of Sulu and cannot be construed in the sense of including the islands within those possessions. All of the islands named in the Sultan's Confirmation as forming part of the original grant to Dent and Overbeck lay to the north of the 4° 10' N line of latitude agreed in the 1891 Convention. This

position was confirmed in the 1903 Stanford map which depicted the eastern limits of the BNBC as tracking the seaward prolongation of the 4° 10' N line of latitude as provided for in the 1891 Convention;

(g) The 1907 exchange of notes between the United States and Great Britain focused on claims to former Spanish possessions in the Sulu Archipelago situated further north than the disputed islands and thus bore no relation to them. In any event, these exchanges were *res inter alios acta* as far as The Netherlands was concerned;

(h) The Convention of 2 January 1930 between the United States and the United Kingdom confirmed that the disputed islands were not part of U.S. territorial possessions. Furthermore, the disputed islands could not have been allocated to Great Britain as a result of the 1930 Convention because they already belonged to The Netherlands by virtue of the 1891 Convention.

CHAPTER VII

MALAYSIA'S ASSERTIONS OF POSSESSION AND ADMINISTRATION OF THE ISLANDS POST-1891 DO NOT CONFIRM ANY MALAYSIAN TITLE

7.1 In Chapter 6 of its Memorial, Malaysia bases its claim on "the continuous peaceful possession and administration of the islands by Malaysia and its predecessors in title" in an attempt to support the second "strand" of its argument[1], according to which, even if the Sultan of Sulu did not have original title over Ligitan and Sipadan, this continuous possession would have sufficed to confer territorial title over the disputed islands to Malaysia.

7.2 Just as Malaysia errs in its interpretation of the 1891 Convention, so does it misinterpret the legal role of *effectivités* in relation to the question of title (Section 1). It fails to establish its sovereignty through acts of effective administration by it or by its predecessors (Section 2), while unjustifiably downplaying the scope of Dutch and Indonesian activities relating to the islands (Section 3) and neglects the significance of the 1969 negotiations and the diplomatic history of the case (Section 4). Finally, Malaysia's Memorial misrepresents the import of the map evidence in the case. Indonesia will thus show that the map evidence constitutes an element of the conduct of the Parties and their predecessors which must be taken into consideration and which fully confirms Indonesia's title over the islands (Section 5).

Section 1. The Legal Role of *Effectivités* in the Case

7.3 As has been noted[2], the Parties agree that the disputed islands have never been considered *terrae nullius*, at least during the relevant period for the purposes of this dispute[3]. Nonetheless, Malaysia dismisses out of hand any possibility that the notion of prescriptive acquisition applies to the islands:

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[1] See para. 5.1.

[2] See paras. 2.14 and 3.2, above.

[3] See IM, para. 4.1 and MM, paras. 3.1 and 5.8.

> "This approach, founded upon long, peaceful and undisputed administration, is not, it must be emphasised, one involving the assertion by Malaysia of a prescriptive title against Indonesia. [...] Indonesia and the Netherlands never had title to the islands; so there is no question of their having been deprived of it by prescription"[4].

7.4 The entire reasoning behind Malaysia's argument is based on a fundamentally flawed premise: that Indonesia lacks territorial title to the islands in question. On the one hand, as Indonesia recalled in Section 1 of Chapter III, there is every reason to believe that prior to colonisation by The Netherlands, the Sultan of Boeloengan held territorial title over Ligitan and Sipadan – a conclusion which is confirmed by the solemn declaration made by the present pretender to the Sultanate of Sulu[5]. Moreover, to the extent that there was any ambiguity as to the extent of the Sultan's possessions, the Anglo-Dutch Convention of 1891 settled the question.

7.5 In the light of this, the administrative acts, of which Malaysia boasts, must have been of such a nature so as to *displace* an existing title and not merely to *confirm* it. Indonesia reserves its position on the question of whether a transfer of sovereignty may result from a long period of undisputed occupation, be that through acquisitive prescription – a concept which is doubtful under international law[6] – or by any other means, without the consent of the dispossessed State. In any event, further discussion on this point is of little relevance given that Malaysia specifically dismisses this line of argument and that the acts on which it relies are insufficient to establish its sovereignty over Ligitan and Sipadan, even if the situation were *res nullius*, which it is not.

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[4] MM, para. 6.3.

[5] Annex 3.

[6] In case of any doubts on this point, see, in particular, Judge Moreno Quintana's dissenting opinion in the case concerning *Rights of Passage over Indian Territory*, which considers that "prescription, a private law institution [...] finds no place in international law", *Rights of Passage over Indian Territory, Merits, Judgment, I.C.J. Reports 1960*, p. 6 at p. 88. See also the cautious approach followed by the Court in its Judgment of 13 December 1999 in the case concerning *Kasikili/Sedudu Island (Botswana / Namibia), Judgment, I.C.J.*, para. 97 and the careful consideration of the issue in Sir Robert Jennings and Sir Arthur Watts eds., *Oppenheim's International Law*, 9th ed., London, Longman, 1992, Vol. I, pp. 703-708; See also Brownlie, I., *Principles of Public International Law*, 5th ed., Oxford University Press, 1998, p. 156, and the very comprehensive presentation of the whole problem in Kohen, M. G., *Possession incontestée et souveraineté territoriale*, PUF, Paris, 1997, pp. 17-34, 49-56 and 60-71.

7.6 In the case concerning the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, the Court found that once it had established that the 1955 Treaty between Chad and Libya provided it with an answer to the issue before it:

> "the effectiveness of occupation of the relevant areas in the past, and the question whether it was constant, peaceful and acknowledged, [were] ... not matters for determination in this case"[7].

The same solution must prevail in the present case because of the existence of the 1891 Convention. Despite the importance given by Malaysia to the alleged "continuous peaceful possession and administration of the islands by Malaysia and its predecessors in title"[8], this does not coincide with the Court's conclusion in that case.

7.7 The fact remains that *effectivités* carry a different weight and legal significance, depending on whether they are invoked to replace a non-existent title, support an existing one, or overturn sovereignty based on an existing title.

7.8 These distinctions were made clearly by the Chamber of the Court which decided the *Frontier Dispute* case between Burkina Faso and Mali in 1986. After having defined the "colonial *effectivités*" as "the conduct of the administrative authorities as proof of the exercise of territorial jurisdiction in the region during the colonial period", the Chamber went on to state, "in general terms, what legal relationship exists between such acts" and "the relevant titles". The Chamber held that:

> "For this purpose, a distinction must be drawn among several eventualities.
>
> (i) "Where the acts correspond exactly to law, where effective administration is additional" to the title, "the only role of *effectivité* is to confirm the exercise of the right derived" from this legal title;

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[7] *Territorial Dispute (Libyan Arab Jamahiriya / Chad), Judgment, I.C.J. Reports 1994*, p. 6 at p. 38, para. 76. See para. 3.85, above.

[8] MM, Chapter 6.

(ii) "Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title"[9];

(iii) "In the event that the *effectivité* does not co-exist with any legal title, it must invariably be taken into consideration;

(iv) "Finally, there are cases where the legal title is not capable of showing exactly the territorial expanse to which it relates"[10].

7.9 In the present case, these last two hypotheses are not relevant given that:

(a) there can be no doubt as to the "territorial expanse" to which the title relates: the allocation of territories between The Netherlands and the United Kingdom was realised by means of the continuation of parallel 4° 10' N eastward across the island of Sebatik, and seaward; and

(b) as Indonesia has already noted[11], the Parties agree that the disputed islands were never *terrae nullius* during the relevant period[12].

7.10 Consequently, it is only the first two hypotheses defined by the Chamber of the Court in 1994 that should be taken into consideration. In this regard, the effect of the principles identified by the Court depends on whether one considers the issue from the perspective of a State that has evidence of territorial title, or from the perspective of a State that contests such a territorial title. In the first case (in the current dispute the hypothetical State would be Indonesia or its predecessor in title, The Netherlands), the *effectivités* invoked by a State can have a confirmatory role and constitute an illustrative depiction of its exercise of sovereignty (first hypothesis). Alternatively, in the second case (the hypothetical State being Malaysia), according to the Chamber of the Court, a State cannot avail itself of its own possible *effectivités* (or those of its predecessor) in the face of a holder of legal title.

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[9] One could debate whether this wording allows for the acquisition of a prescriptive title, a question which is often disputed in international law. However, since Malaysia expressly states that it does not invoke such a title (MM, para. 6.3), Indonesia does not consider it necessary to enter into this debate. Nevertheless, Indonesia deems it necessary to point out that the supposed *effectivités* which Malaysia invokes would clearly not justify any such prescriptive acquisition, even if such a concept were admissible in international law, which is not the case.

[10] *Frontier Dispute, Judgment, I.C.J. Reports 1986*, p. 554 at pp. 586-587, para. 63. See also *Land, Island and Maritime Frontier Dispute (El Salvador / Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, p. 351 at p. 436, para. 125.

[11] See, for example, para. 7.3, above.

[12] It is unclear whether the Parties agree over what constitutes the relevant period. However, this does not detract from their agreement over the principle in question.

7.11 These principles are well established and confirmed by consistent case law. Thus, in the case concerning the *Temple of Preah Vihear*, where title derived from Thailand's acceptance of a map, the Court found it:

> "difficult to regard such local acts [Thailand's acts on the ground] as overriding and negativing the consistent and undeviating attitude of the central Siamese authorities to the frontier line as mapped"[13].

Similarly, in the case concerning the *Land, Island and Maritime Frontier Dispute*, a Chamber of the Court also analysed the 1986 decision, making clear that in determining the frontier between El Salvador and Honduras in the context of the *uti possidetis* situation, at the time of the two States' respective independence, it could not take into consideration only "the colonial *effectivités*" and not post-colonial acts of administration[14].

7.12 It is in the light of these principles that Malaysia's use and presentation of its alleged *effectivités* (and those of its predecessor), as well as its claim concerning the alleged inactivity of The Netherlands and Indonesia over the disputed islands, should be examined.

7.13 In the present case, as will be seen in Section 2, below, it would be extreme to consider that the two disputed islands had been "effectively administered" by Malaysia before the critical date (i.e. before 1969). However, even if this had been the case, Malaysia cannot validly claim that its alleged *effectivités* prevail over the conventional title of Indonesia.

7.14 Furthermore and in any case, whether considered in isolation or taken as a whole, the acts relied upon by Malaysia do not establish the existence of a continuous peaceful possession and administration of the islands capable of displacing Indonesia's title or of creating a territorial title in its favour.

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[13] *Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports* 1962, p. 6 at p. 30.

[14] *Land, Island and Maritime Frontier Dispute (El Salvador / Honduras: Nicaragua intervening), Judgment, I.C.J. Reports* 1992, p. 351 at pp. 398-399, paras. 61-62.

Section 2. Brief Commentary on the So-Called Acts of Administration Relied Upon by Malaysia

7.15 In paras. 6.5 to 6.31 of its Memorial, Malaysia describes a number of acts that it attributes either to the BNBC, to the British colonial administration or to itself, which allegedly establish Malaysia's acquisition and retention of territorial title over the two disputed islands[15]. For the sake of convenience, Indonesia will examine these acts in the same order as that used by Malaysia.

A. The Alleged Process of Establishing Effective Administration over the Mainland and Adjacent Islands

7.16 In the first instance various facts are set out, which, according to Malaysia, illustrate the progressive establishment of Britain's colonial administration in the region. The principal acts relied upon by Malaysia are the following:

(a) the establishment of a BNBC Residency at Sandakhan (and subsequently in Lahad Datu) and of various posts along the coast of the area that is now called Sabah, and the creation of Semporna;

(b) the repressive acts carried out against the native inhabitants, notably on Tungku, Omadal and Dinawan, the imposition of a boat tax and the resettlement of "remaining Bajaus" near Semporna[16]; and

(c) the nomination of local chiefs by the BNBC at Darvel Bay and Omadal[17].

7.17 However, *not one of these acts* concerned either Ligitan or Sipadan. All of them, without exception, related to towns or islands located north of the 4° 10' N line of latitude. The places on the mainland of Borneo mentioned by Malaysia were all allocated to Great Britain under the 1891 Convention and the closest island to the boundary line – though still

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[15] See MM, para. 6.32.

[16] The initial push to regroup the Bajaus on Trusan Treacher occurred in 1896.

[17] MM, paras. 6.5-6.7.

14.9 kilometres (8 nautical miles) away – is Dinawan, which is situated on the northern tip of Ligitan reef, whereas Pulau Ligitan is on the southern tip[18].

7.18 In this context it should also be noted that in certain passages of its Memorial Malaysia infers the legal status of Ligitan island from that of Ligitan reef; on a number of occasions, Malaysia relies on activities relating to the island of Dinawan and alleges that these examples demonstrate activities concerning the island of Ligitan itself. At para. 6.6 of its Memorial for example, Malaysia asserts:

> "Actions such as those taken against [...] Danawan [...] demonstrated the authority of North Borneo over the Bajau Laut communities on the various islands"[19].

This assimilation is unacceptable and has no foundation in law. It is furthermore expressly contradicted in Chapter 3 ("The Geographical Setting") of Malaysia's Memorial[20] where Ligitan island and Ligitan reef are carefully and correctly distinguished.

7.19 In the light of this, Malaysia's argument simply proves that the British, as well as the Dutch, interpreted the 1891 Convention as having allocated both terrestrial and insular possessions located north of latitude 4° 10' N to Great Britain. It further illustrates that the local inhabitants, notably the Bajau, did not meekly accept the administration imposed by the BNBC. This is clearly shown by the recurrent punitive actions led against them and the fact that the customs clerk appointed in Omadal in 1884 was "subsequently expelled by local Bajaus"[21], and even by their forced resettlement to Trusan Treacher in 1909[22]. Moreover, the incident of 24 September 1878 when a Spanish warship retreated from Sandakan after the inhabitants refused to hoist the Spanish flag, related by Malaysia[23], is of such a nature as to raise serious doubts about the sovereignty of the Sultan of Sulu over this part of the Borneo coast. Contrary to the picture Malaysia seeks to present, this refusal of the Sandakhan chiefs (who do not in any way refer to themselves as "Sulu") was not based on an attachment to the Sultan of Sulu, but on the fact that they wished to take "no part in any wars between Spain or Sulu"[24].

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[18] The distinction is clearly made in Sather, C., *The Bajau Laut. Adaptation, History and Fate in a Maritime Fishing Society of South-Eastern Sabah*, *op. cit.*, pp. 105-106 and in a recent article by Professor Ko Swan Sik, "Asian Territorial Disputes, With Special Reference to the Islands of Sipadan and Ligitan: Succession to Dutch and British Titles?" in Terry D. Gill and Wybo P. Heere (ed.), *Reflections on Principles and Practice of International Law*, Nijhoff, The Hague, Boston, London, 2000, p. 111.

[19] See also MM, para. 6.7 which deals with the co-option of local leaders.

[20] MM, paras. 3.9 and 3.11; see also MM, para. 6.28 and Annex 113, Vol. 4.

[21] *Ibid.*, para. 6.5.

[22] See MM, Annex 89, Vol. 4.

[23] *Ibid.*, para. 6.5.

7.20 According to Malaysia, "A crucial aspect of the Company administration was its co-option of local leaders"[25]. Malaysia gives only two "examples" of this: that of Nakoda Gomba, in Sandakhan, and of Panglima Udang, in Semporna. In the second case, Malaysia relies on an affidavit signed in 1975 by the son of the person concerned[26], who states that his father's jurisdiction included Sipadan and that he used to accompany his father on excursions to gather turtle eggs. Although the second assertion has a plausible air about it[27], the first assertion leads one to conclude that Panglima Udang was a high-ranking local to whom the inhabitants of Semporna would turn in case of disputes concerning precisely the gathering of turtle eggs and nothing more.

7.21 In its Award of 9 October 1998 in the case between Eritrea and Yemen, the Arbitral Tribunal dealt with a similar problem. In this case, Yemen invoked the fact that local fishermen had recourse to a "customary law system of arbitration of local disputes under the authority of an *aq'il* – 'a person known for wisdom and intelligence'"[28], whose decisions were binding[29]. However, the Tribunal considered that:

> "the rules applied in the *aq'il* system do not find their origin in Yemeni law, but are elements of private justice derived from and applicable to the conduct of the trade of fishing. They are a *lex pescatoria* maintained on a regional basis by those participating in fishing (…). The fact that this system is recognized or supported by Yemen does not alter its essentially private character"[30].

This same conclusion must prevail in the present case.

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[24] *Ibid.*, Annex 78, Vol. 4.

[25] *Ibid.*, para. 6.7.

[26] The annexes mentioned in this document (MM, Annex 120, Vol. 4) are not in fact attached; their consultation may be of a certain interest.

[27] See paras. 7.23 *et seq.*, below.

[28] *Award of the Arbitral Tribunal in the First Stage of the Proceedings (Territorial Sovereignty and Scope of the Dispute)*, 9 October 1998, p. 89 at para. 337.

[29] *Ibid.*, p. 89 at para. 338.

[30] *Ibid.*, pp. 89-90 at para. 340.

7.22 None of these facts establishes the administration of the islands in question by Malaysia *à titre de souverain*[31].

B. Collection of Turtle Eggs

7.23 Malaysia devotes no less than four and a half pages to the "right to collect and to control the collection of turtle eggs on Sipadan"[32]. In these pages, Malaysia retraces a history leading back to "well before 1878"[33] and attempts to establish that the "local Bajaus who acknowledged the authority of the Company [BNBC]" or "leading members of the Island community inhabiting the Ligitan Group (especially Danawan)"[34] had been granted a exclusive right to the gathering of turtle eggs, and "that these entitlements were recognised by North Borneo officials, and that disputes concerning collection of turtle eggs were referred to North Borneo officials to resolve"[35].

7.24 Indonesia does not contest these facts, but notes once again that Malaysia exaggerates these acts and gives them a legal significance that they do not deserve. Moreover, Malaysia ignores the fact that Indonesians too used to collect turtle eggs on Sipadan before the occupation of the island by Malaysia.

7.25 There is no doubt that some of the Bajau Laut based on the islands north of the 4° 10' N parallel, and notably on Dinawan, used to gather turtle eggs on Sipadan. However, nothing regarding territorial title to the island can be inferred from this: the presence, be it seasonal or permanent, of foreign peoples operating in a private capacity within a territory does not usurp the rightful holder's sovereign title over the territory in question.

7.26 A similar argument to that put forward by Malaysia was used by Namibia and rejected by the Court in the recent *Kasikili/Sedudu Island* case. In this dispute, Namibia relied on the presence of Masubia tribesmen on Kasikili/Sedudu Island (who depended on Namibia). The Court recognised the existence of a "peaceful and public use of Kasikili/Sedudu, over a period of many years, by Masubia tribesmen from the Eastern Caprivi"[36]; but the Court considered it impossible to infer from this that such a presence could be considered either as a "subsequent practice in the application of the [1890] treaty within the meaning of Article 31, paragraph 3*(b)*, of the Vienna Convention on the Law of Treaties"[37], or "acts of State authority capable of providing alternative justification for prescriptive title"[38]:

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[31] *Legal Status of Eastern Greenland, Judgment, 1933, P.C.I.J.*, Series A/B No. 53, p. 22 at p. 46.

[32] MM, paras 6.9-6.23.

[33] *Ibid.*, para. 6.9.

[34] *Ibid.*, paras. 6.9 and 6.23.

[35] *Ibid.*, para. 6.23.

> "even if links of allegiance may have existed between the Masubia and the Caprivi authorities, it has not been established that the members of this tribe occupied the Island *à titre de souverain*, i.e. that they were exercising functions of State authority there on behalf of those authorities. Indeed, the evidence shows that the Masubia used the Island intermittently, according to the seasons and their needs, for exclusively agricultural purposes..."[39].

7.27 Similarly, in the recent arbitration between Eritrea and Yemen, the Arbitral Tribunal found that:

> "... although substantial evidence of individual fishing practices in the record may be taken as a different form of "*effectivité*" – i.e., one expressive of the generally effective attitude and practice of individual citizens of Eritrea or of Yemen – it is not indicative as such of state activity supporting a claim for administration and control of the Islands. This varied and interesting evidence, on both sides, speaks eloquently concerning the apparent long attachment of the populations of each coast to the fisheries in and around the Islands (...). However, it does not constitute evidence of *effectivités* for the simple reason that none of these functions are acts *à titre de souverain*"[40].

7.28 The same reasoning applies in the present case. The Bajau who were under the administration of the British authorities had gathered turtle eggs in Sipadan for many years; however, they were not the only ones to do so. Indonesia annexed to its Memorial a number of affidavits which establish that Indonesian fishermen also used to fish in the waters around Sipadan without being disturbed by the Malaysian authorities, whom they had never encountered before this dispute arose[41]. Moreover, as can be seen from the affidavit attached to the present Counter-Memorial, Indonesian nationals also used to collect turtle eggs in Sipadan before the Malaysian occupation of the island in the 1970s. Thus, Mr. Paraggam, a Bajau from Derawan island, testified:

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[36] *Kasikili/Sedudu Island (Botswana / Namibia), Judgment, I.C.J.*, 13 December 1999, para. 75.

[37] *Ibid.*, para. 75. The Treaty of 1890 was the instrument which had established the limits of the spheres of influence of the two predecessor States, Great Britain and Germany.

[38] *Ibid.*, para. 99.

[39] *Ibid.*, para. 98.

[40] *Award of the Arbitral Tribunal in the First Stage of the Proceedings (Territorial Sovereignty and Scope of the Dispute)*, 9 October 1998, pp. 84-85 at para. 315.

[41] IM, Annexes I to M, Vol. 5.

> "Circa 1960's I was asked by my relative, Haji Abdul Hamid, a Bajau Tribe from Sampurna, Malaysia to look after turtle eggs at Sipadan Island, where I stayed for two months. During my stay on the island I have never faced any problems from anybody, either Indonesian or Malaysian patrol"[42].

This shows clearly that the collection of turtle eggs on Sipadan was regarded as a "Bajau matter" which had nothing to do with sovereignty over the island.

7.29 These activities prove nothing as to the territorial title of this island. To paraphrase the decision of the Court in the *Kasikili/Sedudu Island* case: as far as The Netherlands, and subsequently Indonesia were concerned, the intermittent presence of Bajau from British Borneo on the island did not trouble anyone and was tolerated, not least because it did not appear to be connected with any interpretation of the 1891 Convention[43].

7.30 The same is true for the regulations issued by the British and the rules established for the resolution of disputes between *Malaysian* nationals which are described in the Malaysian Memorial. Generally, they concern the exercise of *personal* and not *territorial* jurisdiction. It is normal and legitimate for a State or a colonial power to concern itself with the regulation of the activities of its nationals abroad and also with disputes that may arise between its nationals, all the more so if one takes into account local circumstances (for example, difficulties of access, a spread-out population). Neither The Netherlands nor, subsequently, Indonesia were able to impose a strong presence either on the northern part of the coast of Kalimantan or on the surrounding islands[44].

7.31 It is true that Malaysia refers to various documents that it misleadingly tries to use as proof that the British authorities acted as though they considered that the island of Sipadan belonged to them[45]. However, this is not the case.

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[42] Annex 31.

[43] *Kasikili/Sedudu Island (Botswana / Namibia), Judgment, I.C.J.*, 13 December 1999, para. 74.

[44] See Section 3, para. 7, below.

[45] See MM, paras. 6.11 and 6.16.

7.32 The 1917 Ordinance on turtle preservation[46] distinguishes between two areas, stipulating different rules accordingly. In the first area, licenses must be obtained from the colonial administration. In the second area, according to Section 3 of the Ordinance:

> "The areas specified by the Governor from time to time in Schedule C shall be deemed to be native reserves for the collection of turtle eggs, and nothing contained in this Ordinance shall be deemed to affect the collection of turtle eggs by natives therein, and no license or concession granted hereunder shall be deemed to include such areas: provided that natives collecting turtle eggs in such areas shall be subject to any rules declared hereunder for the protection of the industry".

Schedule C thus only mentions Ligitan and Sipadan as "native reserves"[47].

7.33 Indeed, the BNBC's Charter stipulates a policy of respect for indigenous customs[48]. It does not follow from this regulation that the BNBC decision to create "native reserves" can be regarded as an act *à titre de souverain*, but rather that the BNBC was acting, within the limits of its commercial attributions, to protect the interests of the native population and their right to collect turtle eggs. The Ordinance of 1917 shows merely that the British colonial authorities endeavoured to regulate the activities of their nationals in order to avoid friction in the indigenous community and to resolve disputes within that community.

7.34 On the other hand, it is true that the document dated 1922 reproduced in Annex 99 of Malaysia's Memorial and entitled "Commercial Sea Products from the Coast of British Borneo" mentions Sipadan as one of "our islands". But no details of the author of what appears to be a descriptive study printed by the Government Printing Office of British Borneo are given, nor are any details provided about who was involved in the study. In any case, a one-off document of this type does not constitute valuable proof of the existence of sovereignty and, still less, of its displacement.

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[46] *Ibid.*, Annex 97, Vol. 4.

[47] Neither the 1914 Proclamation (MM, Annex 93, Vol. 4), which states in a perfectly neutral way that it is applicable "within British North Borneo" and to "the islands within the State" nor the decisions reproduced in MM, Annexes 91, 94-96, and 102-106 (Vol. 4) mention Ligitan or Sipadan.

[48] MM, Annex 23, Vol. 2, items 8-10.

7.35 Besides, and more generally, it is quite understandable that the local inhabitants and even the local British authorities lacked a clear idea as to who was the owner of Sipadan: in fact, the former were used to gathering turtle eggs in full cooperation with local Bajau inhabitants who were governed by the Dutch administration (and the same was true in relation to fishing)[49]. Moreover, it seems that this activity concerned essentially the Bajau Laut, whose relationship with the territory had nothing in common with the concept now accepted in public international law[50]. Given this situation, it is logical that the British administrators did not ask questions about who held sovereignty over the island and were concerned above all with ensuring that order prevailed among the population under their administration. However, nothing can be inferred from this sound administrative logic in relation to the issue of territorial title over Sipadan.

C. Bird Sanctuary

7.36 Malaysia discusses the creation of a "megapode preserve on Sipadan" proposed by the conservator of forests of Sandakhan[51], which was the subject of a notice in the *Official Gazette* of 1 February 1933. Malaysia adds that the island "is shown as a bird sanctuary in the map at Annexes, vol. 5, Map 13"[52].

7.37 This 1935 map is indeed interesting. It was drawn up on the basis of Survey and Forest Department records. Sipadan is shown on the map, with the legend "Bird Sanctuary". But, significantly, this island, unlike all the other islands situated north of latitude 4° 10' N, is not surrounded by lines which are seen around the other islands and which seem to demarcate the extent of the administrative boundaries.

7.38 In any case, the commendable ecological zeal on behalf of the Sandakhan Conservator of Forests does not amount to proof of the colonial authorities' wish to behave *à titre de souverain* over Sipadan.

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[49] See para. 7.28, above.

[50] See Chapter III, in particular, para. 3.47, above.

[51] MM, Annex 100, Vol. 4.

[52] *Ibid.*, para. 6.24.

D. Construction and Maintenance of Lighthouses

7.39 It cannot be considered surprising that Indonesia did not object to the construction of lighthouses on Sipadan in 1962 and on Ligitan a year later:

(a) such activities were of general interest for navigation, even though Indonesia did not have the necessary funds to carry them out;

(b) the authorities in Jakarta, whether during Dutch colonisation or after independence, have only been able to deal with this remote, sparsely populated and inaccessible region in accordance with its special characteristics (which contrast with the situation on the other side of the border)[53];

(c) and the whole of the first half of the decade of the 1960s was a difficult period for Indonesia, marked by serious tensions with Malaysia in particular.

7.40 In any case, the construction and maintenance of these lighthouses (which the photographs appearing on pages 22 and 25 of Malaysia's Memorial show as very light structures, made of metal bars) does not constitute proof of occupation *à titre de souverain*.

7.41 Here again the Arbitral Award of 9 October 1998 in the case of *Territorial Sovereignty* between Eritrea and Yemen is relevant. In this case, the Tribunal clearly stated:

> "The operation or maintenance of lighthouses and navigational aids is normally connected to the preservation of safe navigation, and not normally taken as a test of sovereignty"[54].

7.42 This is in accordance with statements made by the Court in the *Minquiers and Ecrehos* case in 1953. In this case, the French Government contended:

> "that since 1861 it has assumed the sole charge of the lighting and buoying of the Minquiers for more than 75 years, without having encountered any objection from the United Kingdom Government"

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[53] See Section 4, below.

[54] *Award of the Arbitral Tribunal in the First Stage of the Proceedings (Territorial Sovereignty and Scope of the Dispute)*, 9 October 1998, p. 87 at para. 328.

and put forward various other actions of the same nature. The Court firmly dismissed its claims:

> "The Court does not find that the facts, invoked by the French Government, are sufficient to show that France has a valid title to the Minquiers. As to the above-mentioned acts from the nineteenth and the twentieth centuries in particular, including the buoying outside the reefs of the group, such acts can hardly be considered as sufficient evidence of the intention of that Government to act as sovereign over the islets; nor are those acts of such character that they can be considered as involving a manifestation of State authority in respect of the islets"[55].

7.43 The same is true in this case. Just as France had established and maintained buoys outside the reefs of the relevant group with the purpose of "aid[ing] navigation to and from French ports and protect shipping against the dangerous reefs of the Minquiers"[56], here Malaysia set up the two lighthouses in question with a view "to assist navigation and vessels between Tawau and Sandankan using the Alice Channel route"[57].

E. Control of Tourism

7.44 Malaysia refers to the fact that it has established a tourist complex on the island of Sipadan[58] and that it declared Sipadan and Ligitan protected areas in 1997[59].

7.45 These recent facts are, unfortunately, only too true. Indonesia has protested on many occasions about these developments[60], which constitute infringements of its territorial sovereignty and are simply *voies de fait* (egregiously illegal acts), which occurred after the relevant date. As such, they cannot have any legal effect[61] and are furthermore contrary to the commitment given by Malaysia in 1969 to uphold the existing *status quo* in existence regarding the two islands as has been shown in the Indonesian Memorial. Indonesia will come back briefly to this aspect of the case in the Section 4 below.

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[55] *Minquiers and Ecrehos, Judgment, I.C.J. Reports 1953*, p. 47 at pp. 70-71.
[56] *Ibid.*, p. 47 at p.70.
[57] Colony of North Borneo, *Annual Report*, 1960, MM, Annex 108, Vol. 4.
[58] MM, paras. 3.19, and 6.30.
[59] *Ibid.*, para. 6.31, p. 71.
[60] See IM, paras. 8.71-8.76.
[61] *Ibid.*, paras. 8.71-8.76 and para. 8.31.

Section 3. Dutch and Indonesian Activities Relating to the Islands

7.46 In Chapter 7 of its Memorial, Malaysia deals with Dutch and Indonesian activities with respect to Sipadan and Ligitan and submits that these are insufficient to uphold Indonesian sovereignty over the islands. In this section of the Counter-Memorial, Indonesia will deal with these contentions and will conclude that they are based on erroneous interpretations of the facts. Rather, the Dutch and Indonesian activities, as explained below, confirm that the islands were regarded as belonging to the Netherlands East Indies and, subsequently, Indonesia.

7.47 After the entry into force of the 1891 Convention, the Dutch activities continued[62], but restricted to the islands lying south of the 4°10′ N allocation line stipulated in the 1891 Convention. During the period of pirate activity in these areas (that is until the last expedition by HNLMS *Lynx* in 1921), the Dutch Navy periodically patrolled the seas around islands located off the north-east Borneo coast which were considered to be under Dutch sovereignty. This is shown by the considerable number of warships listed in the *Koloniale Verslagen* (Annual Reports on the Colonies, presented to Parliament by the Dutch Government) which are shown to have been present off the coast of north-eastern Borneo[63]. The islands considered to be under Dutch sovereignty included Sipadan and Ligitan, as is shown by the log-books of ships conducting these patrols. The *Lynx* expedition has already been mentioned in Indonesia's Memorial[64]. Another case involved HNLMS *Koetei* which was present in the area in 1910. This ship's log-book contains an entry for 30 September 1910 specifically mentioning cruising near Sipadan and Ligitan[65]. The patrols by the Dutch Navy continued even after the danger of pirate activity had ceased[66].

7.48 This practice also confirms the interpretation submitted by Indonesia[67] that the definition of the territory of the Sultan of Boeloengan (as a self-governing part of the Netherlands East Indies) annexed to the Contract of Vassalage of 1878, as amended in 1893, contrary to the contentions of Malaysia, continued to include Sipadan and Ligitan.

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[62] As for the activities before 1891, see para. 4.16, above.
[63] Annex 32.
[64] IM, paras. 3.72-3.74 and 6.2-6.5.
[65] Annex 33.
[66] See the list of warships at Annex 32.
[67] See IM, paras. 4.68-4.71 and 5.62.

7.49 Malaysia seems to lay some stress on the fact that the Netherlands Indies Government did not exercise effective control over parts of the domain of the Sultan of Boeloengan until early in the 20th century[68]. Even if that were correct, this certainly does not apply to the maritime element of that domain. As shown above, the Dutch Navy patrolled these areas effectively from the 1870s. The materials relied upon by Malaysia in this part of its Memorial (in particular Annexes 39, 69 and 70) specifically concern the land domain of the Sultan of Boeloengan and say nothing about the effectiveness of the control exercised by the Dutch in their maritime domain.

7.50 In para. 7.14 of its Memorial, Malaysia mentions the hydrographic surveying activities of HNLMS *Macasser* in 1903. Indonesia has also referred to these activities at para. 5.40 of its Memorial. However, the Malaysian interpretation of the report by the commanding officer, i.e. that he appeared to treat all islands mentioned (including Sipadan and Ligitan) as being part of British North Borneo, is unfounded. For surveying purposes it is normal to treat all maritime features in a purely geographical, and politically neutral, way. Rather, the real significance of this report is that it shows Dutch activities in the area, demonstrating that the Dutch had interests there: the Dutch ship was there because of the need to survey the waters surrounding Dutch islands. This survey by the *Macasser* resulted in the publication in 1905 of chart No. 59 by the Netherlands Hydrographic Office. Updated editions of this chart have subsequently been issued several times, based on new data collected by the Dutch navy. This shows that the Dutch Government continued to regard it as its responsibility to ensure the safety of navigation in this area by maintaining updated nautical charts.

7.51 Para. 7.15 of Malaysia's Memorial refers to the November 1921 activities of the Dutch destroyer HNLMS *Lynx*. Indonesia has already dealt with the highly significant *Lynx* expedition in its Memorial[69] and will therefore be brief. Contrary to what Malaysia states, the activities of this Dutch warship are a crystal clear expression of the Dutch views on sovereignty over the islands in this particular area. There can hardly be a clearer demonstration of sovereignty than the exercise of police activities as carried out by the *Lynx* with respect to Sipadan and Ligitan. Malaysia dismisses the *Lynx* activities as just an example of cross-border co-operation by the Dutch and British authorities in the fight against piracy. It is true that the *Lynx* activities also demonstrate cross-border co-operation, but Malaysia misses an important point in this particular case: the way these activities were conducted demonstrates at the same time the respect shown for the territorial sovereignty of both sides. The commander of the *Lynx* stayed outside the territorial sea of British islands, and went ashore only on Dutch islands.

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[68] See MM, paras. 7.5-7.6.

[69] IM, paras. 3.72-3.74 and 6.2-6.5.

7.52 There certainly was no need for the Netherlands Indies Government to perform any formal acts with respect to Sipadan or Ligitan at that time (as Malaysia seems to suggest at para. 7.16 of its Memorial), since they were already under Dutch sovereignty. It should also be kept in mind here that the nature and intensity of the control over territory required from a State by international law for it to uphold its sovereignty in the face of possibly competing claims varies according to the nature of the territory in question. Pronouncements to this effect can be found in a number of international arbitral and judicial decisions[79]. The Dutch activities with respect to these remote and uninhabited islands must be considered more than sufficient for this purpose.

7.53 Finally, in paras. 7.19-7.21 of its Memorial, Malaysia refers to two instances from which there could allegedly be deduced an absence of administration of the islands of Sipadan and Ligitan by Indonesia after it obtained independence. Both instances are irrelevant.

7.54 The first concerns the drawing by Indonesia of archipelagic baselines in 1960. It is correct that at that time Indonesia did not include Sipadan or Ligitan as basepoints for the purpose of drawing baselines and defining its archipelagic waters and territorial sea, but this cannot be interpreted as demonstrating that Indonesia regarded the islands as not belonging to its territory. It should be stressed here that international law neither requires States, which are entitled to do so, to establish archipelagic waters nor, when establishing such waters, to use all basepoints permitted under international law. The archipelagic State has the discretion not to use particular basepoints which are allowed under international law. Consequently, even if Indonesia would have been entitled to draw archipelagic baselines to Sipadan and/or Ligitan there was no requirement to do so and also no requirement to explain in each and every case the reasons for not drawing a particular baseline[71]. The same observations apply to decisions by Indonesia subsequent to 1960 concerning its archipelagic baselines in this particular region.

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[79] See, for example, the Arbitral Award in the *Island of Palmas* case, *RIAA*, Vol. 2, p. 829 at p. 840; *Clipperton Island* Arbitration of 1931, *RIAA*, Vol. 2, p. 1110; *Legal Status of Eastern Greenland, Judgment, 1933, P.C.I.J.*, Series A/B No. 53, p. 22 at pp. 46-47; and more recently, in the Award of the Arbitral Tribunal dated 9 October 1998, *Eritrea/Yemen* Territorial Sovereignty and Scope of the Dispute, para. 452.

7.55 In this connection it is illustrative to note that, while Malaysia deals with the Indonesian Act of 1960 in an attempt to show that Indonesia did not consider the islands of Sipadan and Ligitan as belonging to its territory, Malaysia in its Memorial does not mention its own failure to use the islands as basepoints for determining the extent of its territorial sea before 1969. It is only after the dispute with Indonesia arose that Malaysia started to use the islands for these purposes.

7.56 The oil concessions issued by Indonesia are the other instance mentioned by Malaysia as allegedly showing an absence of administration by Indonesia after independence. First it should be noted that the JAPEX concession mentioned by Malaysia extended not to 30' (30 minutes - approximately 30 miles) south of the 4° 10' N parallel, as contended by Malaysia[72], but to only 30" (30 seconds - i.e. approximately half a mile) south of that line. Indonesia has already dealt extensively with these oil concessions at paras. 6.10-6.16 of its Memorial, and merely wishes to recall its conclusion here that the JAPEX/Total licence demonstrates that Indonesia considered that its jurisdictional rights extended up to the 4° 10' N line and that Malaysia did not object. Indonesia, in granting its concession, created a 0.5 mile "buffer zone" south of the 1891 Convention line. Leaving this kind of narrow buffer zone is not uncommon practice when oil concessions follow international boundaries[73].

7.57 It is again quite remarkable that Malaysia passes over its own oil concession activities. As Indonesia has demonstrated in its Memorial[74], Malaysia has in its practice (in particular the

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[71] It should also be recalled that in the 1969 continental shelf delimitation negotiations, Malaysia recognised Indonesian sovereignty over a number of islands that were not specifically included in the 1960 Act. See Map Annex para. A.41.

[72] MM, para. 7.21.

[73] See the 1968 Iran-Saudi Arabia Agreement delimiting the submarine areas between the two States, which provided that neither party should drill within 500 M. of either side of the boundary line, Charney, J.I., and Alexander, L.M., (ed.), *International Maritime Boundaries* (1993), Vol. 2, p. 1526. Other examples of boundary agreements providing for "buffer zones" are: the 1974 boundary agreement between Iran and Dubai, Charney, J.I., and Alexander, L.M., (ed.), *op. cit.*, p. 1538; the 1971 delimitation agreement between Iran and Bahrain, Charney, J.I., and Alexander, L.M.; (ed.), *op. cit.*, p. 1487; and the delimitation agreement between Iran and Oman, Charney, J.I., and Alexander, L.M., (ed.), *op. cit.*, p. 1503.

[74] IM, paras. 6.17-6.27.

Teiseki oil concession) also respected the 1891 Convention's allocation line by creating a "buffer zone" equivalent to that established by Indonesia. Equally significant is the map published in 1968 by the Malaysian Ministry of Lands and Mines showing the 4°10' N allocation line as the international boundary. This is discussed in detail at paras. 7.74-7.83 below.

7.58 Malaysia's Memorial also passed over the mutual practice of the maintenance of buoys in the region. As Indonesia has demonstrated in its Memorial at paras. 8.41-8.45, both Parties have strictly respected the 4°10' N line established in the 1891 Convention, when placing and maintaining navigational aids in the area.

7.59 Apart from the fact that the so-called "absences of Indonesian administrative acts with respect to the islands" alleged by Malaysia totally misrepresent the situation, as demonstrated in the preceding paragraphs, it is important to stress that there have also been Indonesian activities additional to the ones mentioned above. These have been dealt with in paras. 6.6-6.9 of Indonesia's Memorial. In particular the naval patrols to the islands of Sipedan and Ligitan between 1965 and 1968 demonstrate that Indonesia considered these islands as falling under its sovereignty before the dispute arose in 1969. Also the traditional fishing activities carried out by Indonesian fishermen on and around the islands should be recalled.

Section 4. Post 1969 Activities of the Parties and the Diplomatic History of the Case

7.60 As explained in Indonesia's Memorial, the activities of the Parties after the "critical date" must be considered with some measure of caution[75]. While they cannot alter an existing title, they may confirm the legal situation existing when the dispute crystallised. This is all the more so in the present case since the circumstances in which the dispute arose are of no particular significance.

7.61 In its Memorial, Malaysia claims to set out "The diplomatic history of the dispute" in its short Chapter 4[76]. Malaysia's account is incomplete and paints an inexact picture. For its part, Indonesia has already related in Section 1 of Chapter VIII of its Memorial, the details of the emergence of the dispute in as complete a manner as possible and, in particular, the 1969 negotiations[77]. Indonesia will therefore not repeat this account in its Counter-Memorial but will rather limit itself to demonstrating to what extent Malaysia's presentation of events is faulty, on the basis both of the comments made by it and by what is left unsaid.

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[75] *Ibid.*, paras. 8.46-8.51.
[76] MM, paras. 4.1-4.6.

7.62 Malaysia is however right in noting that in the present case, "the diplomatic background to the Special Agreement of 1997 is relatively brief"[78]. It was in fact only twenty eight years earlier, during bilateral negotiations relating to the delimitation of their respective continental shelves, that Indonesia was suddenly made aware of Malaysia's claims over the disputed islands, which up to that point Indonesia had always considered to be under its sovereignty, given that they are situated south of the 4° 10' N parallel which was stipulated in the 1891 Convention as the limit between the respective possessions of the two States.

7.63 In its Memorial, Malaysia feigns astonishment at the fact that at no point in time has Indonesia, nor its predecessor in title, ever claimed "the now disputed islands"[79]. This fact is far from surprising: neither The Netherlands nor Indonesia had any reason to make a claim over the islands, which belonged to them by virtue of a properly concluded treaty, and which were situated off a rather inaccessible region in Kalimantan and which, what is more, were themselves uninhabited. Indeed, even if Great Britain, or Malaysia itself, had occasionally taken measures relating to one or the other island, Indonesia, who for the most part paid little attention to them[80], did not, however have any particular reason to worry about acts which in no shape or form could be interpreted as evidence of any *animus occupandi*.

7.64 In truth, Indonesia could play Malaysia at its own game and feign astonishment itself: until 1969, it considered itself the holder of an indisputable conventional title, which established its sovereignty over the islands in question and it was only when the Parties commenced negotiations for the purpose of the delimitation of their respective areas of continental shelf that Malaysia, for the first time, advanced a claim to the islands[81].

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[77] IM, paras. 8.5-8.28.
[78] MM, para. 4.1.
[79] *Ibid.*, paras. 4.2-4.3.
[80] See para. 7.28, above.
[81] See MM, para. 4.3.

7.65 Indonesia has described in its Memorial[82] the precise circumstances in which Malaysia first made known this unexpected claim. Indonesia does not believe there to be any useful purpose in discussing this issue anew and would ask the Court to refer back to its Memorial for further details.

7.66 With the benefit of hindsight, it is easier to understand Malaysia's sudden interest in the islands, which contrary to its declarations, had not been previously "administered", but regarding which Great Britain and then Malaysia had taken some measures aimed exclusively at regulating the sporadic activities carried out by their respective nationals in the area and facilitating navigation to and from Tawau. This was the period during which there was talk of potential hydrocarbon wealth in the continental shelf of the region.

7.67 Moreover, the development of an important tourist project on Sipadan also explains this late Malaysian interest in the island. According to Malaysia, the tourist centre at Sipadan has seen more than 115,000 tourists over fifteen years, but Malaysia remains remarkably coy on the subject in its Memorial[83]; for a good reason: as stated above[84], its establishment is in total contravention of the undertaking made by the two Parties in 1969, whereby both sides agreed not to do anything that might disrupt the *status quo*[85].

7.68 Legally speaking, nothing can be inferred from this, given that the 1969 negotiations represent the critical date after which acts carried out by the Parties cannot alter the legal situation in existence prior to this date[86]. However, Malaysia's activities on the disputed islands, and especially on Sipadan, the island lying farthest from its coast, helps to shed some light, retrospectively, over the circumstances in which Malaysia suddenly made public its claim in 1969, which had never been hinted at before.

7.69 Another recent dramatic event must be mentioned: the taking of hostages on Pulau Sipadan by a group of Philippine terrorists. Since the dispute concerning sovereignty over the island had been submitted to the Court before this event took place, it is not a relevant fact with regard to the settlement of the dispute. However, Indonesia wishes to stress that, since newspapers have frequently referred to Sipadan as a "Malaysian island" – an understandable mistake since Malaysia illegally occupies the island – Indonesia carefully recalled that it considers Sipadan as part of its territory and that the dispute is still *sub judice*[87].

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[82] IM, paras. 8.10-8.14.

[83] See MM, paras. 3.19 and 6.30.

[84] Para. 7.45, above.

[85] See IM, para. 8.20. This interpretation of the 1969 agreement is confirmed e.g. by David, H., *Tensions Within ASEAN, Malaysia and its Neighbours*, Monographs on South-East Asian Politics and International Relations, N° 1, Dept. of South-East Asian Studies, University of Hull, 1966, p. 71, Annex 34, or Ko Swan Sik, "Asian Territorial Disputes, With Special Reference to the Islands of Sipadan and Ligitan: Succession to Dutch and British Titles?" in Terry D. Gill and Wybo P. Heere eds., *Reflections on Principles and Practice of International Law*, Nijhoff, The Hague, Boston, London, 2000, p. 113.

[86] See IM, paras. 8.23-8.27.

Section 5. The Map Evidence as an Element of the Conduct of the Parties and Their Predecessors

7.70 In its Memorial, Indonesia reviewed the considerable body of cartographic evidence which, consistently over a period of some 80 years, confirmed the fact that the line running eastward from the Island of Sebatik along the 4° 10' N parallel, established by the 1891 Convention, was viewed by all the interested parties as representing the respective limits of Dutch (later Indonesian) and British (later Malaysian) territorial possessions in the relevant area[88]. The repeated appearance of the 1891 line extending seaward of Sebatik on Dutch, British, Indonesian and particularly Malaysian maps is an important element of the conduct of the Parties supporting the conclusion that both Sipadan and Ligitan belong to Indonesia.

7.71 There appears to be agreement between the Parties that the map evidence is relevant in assessing what the views of the interested parties were with respect to the territorial situation in the area of concern. Indeed, Malaysia itself has attempted to rely on a selection of maps to support its position[89], and Malaysia has furnished the Court with a Map Atlas (Volume 5 to its Memorial) setting forth a sample of such maps.

7.72 In the present section, Indonesia will, without recanvassing all that was said in its Memorial on the subject, review some of the more important aspects of the map evidence. A detailed analysis of the maps that have been supplied by Malaysia in its Map Atlas may be found in the Map Annex attached to this pleading.

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[87] Annex 35.

[88] See IM, paras. 6.30-6.79.

[89] MM, Chapter 10.

A. Certain Key Aspects of the Map Evidence Demonstrating Dutch and Indonesian Title to the Disputed Islands

7.73 Any examination of the map evidence must necessarily start with the cartographic materials that were prepared in connection with the negotiation and ratification of the 1891 Convention since it is agreed between the Parties that this instrument represents a crucial element in the case. Indonesia has discussed the events surrounding the conclusion of the 1891 Convention in Chapter V above[90]. Suffice it to recall three essential conclusions which may be drawn from the cartographic materials that were either presented or exchanged between the Dutch and British in connection with the 1891 Convention.

(a) *First*, it is apparent even from British sketch maps that were prepared during the course of the negotiation of the Convention that the British envisaged that the eventual boundary line would continue out to sea. Indonesia presented as Map 3 in its Map Atlas a British map prepared in 1888 showing a proposed line of territorial allocation extending out to sea, albeit passing to the south of the island of Sebatik[91]. While the parties ultimately decided on a different course for the boundary, it is significant that the British deemed it important to extend the line out to sea indefinitely, presumably so as to deal with all territorial questions in issue.

(b) *Second*, Indonesia has shown in Chapter V above that the Dutch negotiators of the Convention also presented maps which showed the ultimate boundary line extending seaward of Sebatik, specifically along the 4° 10' N parallel of latitude[92]. There is no evidence that Britain objected to the extension of the boundary line seaward of Sebatik.

(c) *Third*, and most importantly, the map attached to the Dutch Explanatory Memorandum prepared in the course of the ratification process of the 1891 Convention clearly showed the boundary line extending seaward from Sebatik along the 4° 10' N line of latitude. This map, which Malaysia itself has attached as Map 2 to its Map Atlas (although the map is misleadingly labelled there as an "Internal Dutch Map (1891)"), was communicated to the British authorities who raised no objection. As such, the Explanatory Memorandum Map is entitled to considerable, if not dispositive, probative value as reflecting the agreed view of Great Britain and The Netherlands as to the scope of the boundary agreed in the 1891 Convention (as discussed in paras. 5.32-5.33 and para. 5.47 above).

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[90] See paras. 5.77-5.94, above.

[91] See D4, paras. 5.20 and 5.23(a).

[92] Para. 5.70, above.

7.74 In August 1903, Stanford, which effectively acted as the official cartographer of the BNBC, prepared a highly pertinent map which purported to show the administrative limits of the various provinces comprising the BNBC's possession in North Borneo[93]. The map is important in three key respects.

(a) *First*, in showing the administrative divisions of the BNBC, the map clearly depicted the southern limits of the Elphinstone Province as extending seaward from the Island of Sebatik *along the 4° 10' N line of latitude to a point to the north and east of the islands of Sipadan and Ligitan.* There were no disclaimers on the map. It follows that Stanford, and by implication the BNBC, were of the view that the southern limits of the possessions of the BNBC were defined by the precise line that had been agreed in the 1891 Convention. There could be no other conceivable reason why the limits of administrative divisions of the BNBC tracked the 4° 10' N parallel so faithfully. The necessary implication of the map was that islands lying south of this line – e.g., Sipadan and Ligitan – appertained to The Netherlands.

(b) *Second*, Stanford's map was prepared just four months after the April 1903 Confirmation of Cession signed by the Sultan of Sulu. It will be recalled that this Confirmation, of dubious legal value[94], identified a number of specific islands falling more than three marine leagues (nine nautical miles) from the coast which were belatedly considered by the Sultan to have been included in his original 1878 grant to the BNBC. All of the islands so named were located to the *north* of the 4° 10′ N line of latitude; hence, all were included on Stanford's map as appertaining to the BNBC. In contrast, neither Sipadan nor Ligitan were included in the 1903 Confirmation. Nor did they fall within the BNBC's possessions as confirmed by the map.

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[93] A copy of this map with the relevant portions enlarged may be found opposite p. 119 of Indonesia's Memorial. It also appears as Map 4.1 opposite p. 55 of this Counter-Memorial.

[94] See para. 4.29, above.

(c) *Third*, the Stanford map was also prepared after the 1898 and 1900 Treaties by which Spain relinquished its possessions in the Sulu Archipelago to the United States. Malaysia has suggested, as one of its alleged chains of title, that the islands belonged to the United States at the time[98]. However, the Stanford map shows the southern extent of U.S. possessions in the area as Sibutu Island, well to the north and east of Sipadan and Ligitan. Hence, the map also contradicts any notion that the disputed islands were considered to be U.S. possessions at the time.

7.75 Given the fact that the 1903 Stanford map runs so directly contrary to Malaysia's version of events, it is not surprising that Malaysia did not see fit to reproduce this map in its Map Atlas. Nonetheless, the map provides eloquent testimony as to the contemporaneous views of British experts familiar with the territory in question that Sipadan and Ligitan were recognised as forming part of The Netherlands' possessions.

7.76 Apart from Dutch and British maps such as these which confirm Indonesia's submissions, there are a large number of Malaysian maps which themselves show that Malaysia considered the islands in question as belonging to Indonesia. Without reviewing all the examples which were discussed at paras. 6.66-6.76 of Indonesia's Memorial, there is one such map which merits particular attention.

7.77 This was the map published by the Malaysian Ministry of Lands and Mines in 1968, a copy of which was attached following page 106 of Indonesia's Memorial and which, for convenience, is reproduced in Annex 36 hereto.

7.78 The map was prepared at a time when Malaysia was taking an active interest in the prospect of oil and gas exploration in the offshore areas lying in the vicinity of Ligitan and

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[98] This aspect of Malaysia's case has been fully rebutted in Chapter VI above.

Sipadan and was thus examining the area carefully. It depicted the limits of various oil prospecting licences in the area which were outlined by red lines on the map. Of particular interest are the limits of the licence granted to the Japanese firm, Teiseki, offshore Semporna. As can be seen from the map, the southern limits of the licence reflected the 4° 10' N parallel of latitude[96].

7.79 What is of even greater interest is that the map, which it must be recalled was prepared by an official agency of the Malaysian Government, also depicted Malaysia's international boundaries around Sabah by means of a black, dashed line. There were no disclaimers on the map. It showed, very clearly, the international boundary with Indonesia as extending seaward from the Island of Sebatik along the 4° 10' N latitude to a point well to the east of Ligitan and Sipadan where the boundary met up with the prolongation southward of the boundary between Malaysia and the Philippines agreed under the 1930 Anglo-U.S. Convention.

7.80 The map as such merits the highest degree of probative value as an admission against interest by the Malaysian Government. It was prepared before the emergence of the dispute in 1969. Moreover, it directly contradicts the basic premise upon which Malaysia's case rests – namely, the contention that the 1891 Convention did not establish the 4° 10' N line of latitude east of Sebatik as the limit of Dutch and British territorial possessions in the area. Sipadan and Ligitan do not appear on the map, but they both lie to the south of the international boundary line depicted on the map and thus on the Indonesian side of the boundary.

7.81 Malaysia conspicuously omitted referring to this crucial map in its Memorial. Indeed, as noted previously in this chapter[97], Malaysia has avoided any discussion of its own history of granting oil concessions in the area, a history which so strikingly confirms the fact that Malaysia viewed the 4° 10' N line as constituting the limit of its jurisdiction in the vicinity of the disputed islands.

7.82 The 1968 Malaysian Ministry of Lands and Mines map is simply one of a large number of official Malaysian maps which depict the 4° 10' N line as the boundary of the Parties' respective territorial possessions lying offshore. In this respect, the Court is respectfully referred back to the discussion of these maps which appear at paras. 6.66 to 6.79 of Indonesia's Memorial. What is more, Malaysia itself is forced to concede that a number of its official maps depict the 4° 10′ N line as representing the boundary with Indonesia east of Sebatik and it refers to two maps in particular[98].

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[96] As documented in Indonesia's Memorial the southern limits of the Teiseki license actually ran along the 4° 10' 30" N line of latitude, thus creating a 30" (approximately half a mile) buffer zone to the north of the 1891 Convention line.

[97] See para. 7.56, above.

7.83 Malaysia seeks to escape from the adverse inferences to be drawn from these maps by arguing that some of the Malaysian maps showing the 4° 10′ N line included disclaimers on them[99]. What Malaysia fails to point out, however, is that perhaps the most relevant of all the maps – the 1968 Ministry of Lands and Mines map – contained no such disclaimer; it showed the international boundary with Indonesia exactly as Indonesia has described it in its pleadings.

7.84 In any event, the continuous appearance of the 1891 line extending east of Sebatik on Malaysian and other maps was not an accident. Clearly, Malaysia was of the view that a line of territorial allocation existed with Indonesia in the area and that that line was the boundary fixed by the 1891 Convention. This line appeared in the Dutch Explanatory Memorandum of 1891; it appeared in the 1903 Stanford map showing the administrative limits of the BNBC's territory; and it was consistently depicted on Malaysian maps of the area following Malaysia's independence in 1963 until Malaysia self-servingly changed its position in 1979, well after the critical date in the case. It also appeared on Indonesian maps as, for example, the 1953 Indonesian atlas map which is attached as Annex 37 hereto.

7.85 As pointed out in Indonesia's Memorial, even after the dispute over the status of the islands emerged in 1969, Malaysia continued for a time to depict the 1891 line as a boundary line in the relevant area[100]. Moreover, the Parties also respected the 1891 line in practice when they erected navigation aids on Roach Reef and Alert Reefs in 1994[101].

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[98] See MM, para. 10.17 and Maps 20 and 21 in Malaysia's Map Atlas.

[99] *Ibid.*

[100] See IM, paras. 6.76 and 8.36-8.42.

[101] IM, para. 8.41-8.45 and see para. 7.58, above.

B. The Maps Introduced by Malaysia Do Not Support Its Claim of Title over the Disputed Islands

7.86 The maps introduced by Malaysia in no way detract from the fact that the map evidence, taken as a whole, overwhelmingly supports Indonesia's submission that Sipadan and Ligitan were regarded as belonging, after the conclusion of the 1891 Convention, first to The Netherlands and subsequently to Indonesia. While detailed comments on the Malaysian Map Atlas are included in the Map Annex at the end of this pleading, a number of general comments may be offered here to place the matter in perspective.

7.87 The first point to make is that virtually none of the maps relied on by Malaysia actually shows the islands as Malaysian possessions. In fact, the only map which depicts the disputed islands as Malaysian possessions, by virtue of the fact that the islands fell within Malaysia's continental shelf claim, is a map prepared in 1979 to illustrate Malaysia's claim in the area[183]. Indonesia discussed this map at paras. 8.59-8.69 of its Memorial. The key point to bear in mind in considering this map is that it was published ten years after the dispute over the islands crystallised in 1969. Published, as it was, well after the critical date in the case, the map was entirely self-serving in nature and was immediately protested by Indonesia. As such, the 1979 map is without legal relevance in the case.

7.88 Secondly, Malaysia also purports to rely on a number of maps which do not depict the 1891 line as extending out the sea. Malaysia appears to find that this is significant. However, the true position is that these maps are entirely neutral with respect to the territorial attribution of the islands of Sipadan or Ligitan.

7.89 The 1891 line was not, at the time it was agreed, a maritime delimitation line. Indeed, the concept of the continental shelf did not exist at the time. Rather, the purpose of the 1891 Convention was to define the respective Dutch and British territorial possessions in the area. The mere fact that maps may have been prepared which did not show the 1891 line as extending east of Sebatik in no way demonstrates that the islands in question were deemed to be British (or Malaysian). Consequently, these maps are of no assistance to Malaysia's case.

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[183] Map 19 in Malaysia's Map Atlas.

7.90 A good example of this practice concerns the various British Admiralty Charts that Malaysia has discussed in its Memorial and attached to its Map Atlas[103]. These maps were precisely what they purported to be - maritime charts produced by the British Admiralty for navigation purposes - not maps designed to depict sovereignty over the islands in question. With respect to the disputed islands, they were completely neutral.

7.91 Another map, which Malaysia appears to attach particular significance to, is a map prepared by The Netherlands in 1913 in connection with the 1915 demarcation, *on the land*, of the boundary established by the 1891 Convention[104]. There was no need for this map to include the line extending eastward of the island of Sebatik along the 4° 10' N parallel since it was concerned with the territorial situation on the mainland. Moreover, as Malaysia itself points out, the map was a topographical map prepared by The Netherlands Topographical Office[105]. It thus showed the topography of the mainland, but not of the islands with which it was not concerned. It follows that this map lends no support to Malaysia's case.

7.92 Malaysia's Memorial then goes on to discuss a number of so-called "Other Maps"[106]. These maps are addressed in detail in the Map Annex. Suffice it to say that none of the maps supports Malaysia's contentions as to sovereignty over the islands. This is in stark contrast to maps which Indonesia has introduced which clearly show, whether by way of admissions against interest by Great Britain and Malaysia, or as evidence of general repute, that the status of the 1891 line separating the Parties' territorial possessions east of Sebatik was never questioned until Malaysia's striking change of position in 1979. Indeed, as noted above, Malaysia is forced to concede in its discussion of these maps that its official agencies published maps which clearly contradict the position as to sovereignty now advanced in Malaysia's Memorial[107].

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[103] See, para. 10.6 and maps 8, 9, 10 and 11 in Malaysia's Map Atlas.
[104] *Ibid.*, paras. 10.3-10.4 and Map 1 in Malaysia's Map Atlas.
[105] MM, para. 10.9.
[106] *Ibid.* paras. 10.7-10.19.
[107] See paras. 7.82-7.83 above.

C. Conclusions as to the Maps

7.93 The fact of the matter remains that the 1891 line was repeatedly portrayed on both British and Malaysian maps as having the status of a boundary separating the territorial possessions of the parties in the area of concern. Had one of the purposes of the 1891 Convention not been to deal with Dutch and British insular territories lying east of Sebatik, as Malaysia maintains, then there would have been no reason for the extension of the 1891 line along the 4° 10' N line of latitude east of Sebatik to appear at all on the maps. But it was no accident that the line was placed on key maps of the area. Its persistent appearance, sometimes expressly labelled as the international boundary of Malaysia on Malaysian maps, conclusively confirms Indonesia's sovereignty over the islands of Sipadan and Ligitan.

SUBMISSIONS

On the basis of the considerations set out in this Counter-Memorial, the Government of the Republic of Indonesia requests the Court to adjudge and declare that:

(a) sovereignty over Pulau Ligitan belongs to the Republic of Indonesia; and

(b) sovereignty over Pulau Sipadan belongs to the Republic of Indonesia.

Mr. Nugroho Wisnumurti

Agent of the Republic of Indonesia

MAP ANNEX

COMMENTS ON MALAYSIA'S POSITION CONCERNING MAP EVIDENCE

A.1 As is apparent from their Memorials, both Parties attach legal significance to the map evidence. Malaysia's main argument on the cartographic evidence, developed in Chapter 10 of its Memorial, is that the relevant maps in this case show either or both of the following features:

(a) that the boundary between British and Dutch possessions did not extend into the sea east of Sebatik, and;

(b) that Ligitan and Sipadan were both regarded as being either British or Malaysian islands.

A.2 In this Annex, Indonesia will review the maps considered in Chapter 10 of Malaysia's Memorial to see whether they support Malaysia's analysis in the light of the considerable map evidence which Indonesia has introduced which contradicts Malaysia's claims. It should be noted at the outset that the 1891 Explanatory Memorandum Map and the map attached to the 1915 Agreement have been discussed in detail in Chapter V of Indonesia's Counter-Memorial and will therefore not be reviewed further in this Annex.

Section 1. British Admiralty Charts

A.3 In reviewing four British Admiralty charts, drawn between 1881 and 1963, Malaysia argues that, while depicting a land boundary "running from the east to the west coast of Sebatik", these maps show no eastward projection of the land boundary. The maps in question are:

(a) Chart no. 1681, *Northern Shore of Sibuko Bay*, (first drawn in 1891-92 and subsequently corrected to 1997), which appears as Map 8 in Malaysia's Atlas and Map No. 22 in Indonesia's Map Atlas;

(b) Chart No. 2576, *Sulu Archipelago and the North East Coast of Borneo from British Admiralty Surveys to 1892, from United States Government Charts to 1934, from Netherlands Government Charts to 1936*, which appears as Map 9 in Malaysia's Atlas;

(c) Chart No. 2660B, *China Sea – Southern Portion*, (first drawn in 1881), which appears as Map 10 in Malaysia's Atlas; and

(d) Chart No. 1852, *Tawau to Tarakan*, (first published in 1960), which appears as Map 11 in Malaysia's Atlas.

A.4 It should be recalled, as a general point, that the purpose of these charts was to assist navigation in the areas covered and not to reflect political boundaries. As noted in *The American Practical Navigator* published by the U.S. Defense Mapping Agency (1995 ed.), the function of a nautical chart is to show:

> "water depth, the shoreline of adjacent land, topographic features, aids to navigation, and *other navigational information*. It is a work area on which the navigator plots courses, ascertains positions, and views the relationship of the ship to the surrounding area. It assists the navigator in avoiding dangers and arriving safely at his destination."[1]

A.5 Moreover, pursuant to the *Chart Specifications* of the International Hydrographic Organisation (1988 Edition), "Boundaries and limits of no significance to navigation or fishing should be omitted from navigational charts".

A.6 This is clearly illustrated by the first chart listed above, Map 8 in Malaysia's Atlas, which shows no boundaries at all. This is not surprising, since its purpose was to depict the geographical features of the northern shore of Sibuko Bay. It was for this reason that Indonesia reproduced it in the Atlas annexed to its Memorial, as an illustrative and descriptive aid to Chapter II relating to the geographical description of the area.

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[1] At p. 23. Emphasis added.

A.7 Regarding the other three charts, Maps 9, 10 and 11 in Malaysia's Atlas, it should be emphasised that they all bear legends specifying that the boundary between North Borneo and the Dutch territories is "approximate" only. In addition, it is significant that, although all these nautical charts show a number of offshore features over which sovereignty is clearly undisputed such as islands of the Philippines group, the sovereignty of these features is not indicated.

A.8 Finally, Malaysia itself, at para. 10.17 of its Memorial, downplays the significance of navigational charts regarding political boundaries. Malaysia's position is therefore inconsistent to the extent it relies on such charts only when they appear to be in its favour.

A.9 For the reasons mentioned above, these maps bear absolutely no weight regarding the position of the boundary and cannot be viewed as a graphic depiction of the "British understanding of the situation" as Malaysia argues[2].

Section 2. Other Maps

A.10 Under this heading, Malaysia groups some sixteen maps of various provenance published between 1891 and 1978 which, it alleges, show either that the boundary line does not extend east of Sebatik island or that Ligitan and Sipadan are to be regarded as being British or Malaysian, or both. These maps will be reviewed in the order used by Malaysia in its Memorial.

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[2] MM, para. 10.6.

A. Map 12 of Malaysia's Atlas: *Plan Shewing the Result of the Determination of Parallel of 4° 10' N on East Coast Borneo and Examination of Rivers in Vicinity, June 1891*

A.11 The first of these maps was drawn up by the British Hydrographic Office and is entitled *Plan Shewing the Result of the Determination of the Parallel of 4° 10' N. on East Coast Borneo and Examination of Rivers in Vicinity, June, 1891*. Malaysia notes that "the 4°10' N line is shown on the map as a parallel, but there is no indication that it is a boundary"[3]. It should be noted that the 4° 10' N line drawn on the map runs across both land and sea. If Malaysia's argument that the seaward extension of this line is not a boundary were to be accepted, this would imply that the line traversing the land territory is similarly not a boundary.

A.12 Moreover, as observed by Indonesia in its Memorial, this map is significant for this dispute only if seen in its proper context[4]. In this respect, it should be recalled that, prior to the conclusion of the 1891 Convention, the British Government proposed to the Dutch Government to conduct a joint maritime survey of the area to ascertain the point at which the 4°10' N latitude reaches the sea and to explore and determine the course of the rivers Simengaris and Soedang, which flow into the sea near Broershoek. The map in question appears to illustrate the results of the survey carried out by the ships HMS *Egeria* and HMS *Rattler*[5]. This map, also known as a "tracing", i.e. an original map traced onto partially transparent paper, was transmitted by the British Minister in The Hague to the Dutch Foreign Minister, who replied on 1 December 1891 stating that the results of the British survey were consistent with results obtained by the Dutch officers and that his Government accepted the results obtained[6].

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[3] *Ibid.*, para. 10.7.

[4] IM, paras. 5.34-5.40.

[5] *Ibid.*, Annex 78, Vol. 3.

[6] *Ibid.*, para. 5.38.

A.13 This map, and its background, are thus important in two respects:

(a) They show that the Dutch and British Governments worked in close co-operation in conducting the survey, showing evident concern for their conflicting claims in the area extending east of the island of Sebatik, and

(b) These events are evidence of the fact that the tracing showing the parallel of 4° 10' N *extending out to sea* was one of the issues on which both the Dutch and British Governments had expressly agreed.

B. Map 6 of Malaysia's Atlas: *Map of British North Borneo,* Stanford, 1906

A.14 The second map examined by Malaysia in its Memorial is the *Map of British North Borneo* issued by Stanford in 1906 and annexed by Malaysia as Map 6 of its Atlas.

A.15 Malaysia points to the fact that the boundary between Elphinstone Province and Dutch territory depicted on this map runs across Sebatik but does not extend eastward into the sea, thus allegedly indicating that there is no extension of the line east of Sebatik. However, it should be noted that the purpose of this map appears to be to portray the internal provincial divisions of British North Borneo. This is done by means of red lines drawn alongside the borders of the different provinces, none of which extends seaward. Given the purpose of this map, it can be assumed that the line running across the island of Sebatik was intended to delimit the land boundaries of the administrative jurisdiction of the Elphinstone Province and, as such, had no relevance for international boundaries.

A.16 As regards the jurisdiction of British North Borneo over offshore features in the area, this, rather than being done with lines drawn at sea, appears to have been done on this map by colour coding. Thus, the southern part of Sebatik and the island of Nanoekhan are coloured orange, as is the mainland Dutch territory, whilst the northern part of Sebatik is coloured pink, as is mainland British North Borneo. With regard to the disputed islands, a close inspection of the map reveals that, while islands in Sibuko Bay, such as Si Amil, Dinawan, Mabul and

Kapalai are coloured pink, indicating British North Borneo, Sipadan and Ligitan are coloured neither pink nor orange. This can be readily seen by viewing the enlargement of this map, which Indonesia has reproduced at Annex 38.

A.17 This 1906 map should be compared to an earlier map, also published by Stanford and dating from 1903, shortly after the Confirmation of Cession, which was considered at some length in Indonesia's Memorial[7]. In the 1903 map the boundaries of the BNBC's provinces are shown to extend seaward by dotted red lines[8]. In particular, the southern boundary of the Elphinstone province is shown to run across the island of Sebatik, continuing seaward, leaving the islands of Ligitan and Sipadan outside of the BNBC's territory. These two maps are thus consistent in showing, albeit through different graphic means (colour coding as opposed to actual lines drawn) that the disputed islands did not fall within the BNBC's administrative domain.

A.18 Malaysia also states that the significance of the 1906 map is all the greater as a result of the hand-written legend appearing on it[9], which refers to the fact that this was the map mentioned in "the third term" of the agreement effected by the exchange of notes between the British Ambassador and U.S. Acting Secretary of State on 3 and 10 July 1907. The letter from the British Ambassador dated 3 July 1907 referred to "the line traced on the map which accompanied Sir H. M. Durand's memorandum of the 23rd of June, 1906 and which is attached to and deemed to form part of this Note"[10]. A copy of the 1906 Stanford's map is indeed attached to the original copy of the U.S. Government's formal adherence to the 1907 arrangement kept in the Public Record Office.

A.19 The red line drawn on Map 6 in Malaysia's Memorial is accompanied by the manuscript words: "Red line referred to in paragraph 24 of despatch dated 13 July 1903 to Foreign Office". That despatch has been exhibited by Indonesia as Annex 102 of its Memorial. The despatch was sent by the Chairman of the BNBC, Richard B. Martin to the British Foreign Office and expressed the Company's concern regarding the visit that a U.S.

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[7] Map No. 9 in Indonesia's Map Atlas.
[8] See, IM, paras. 6.52-6.53.
[9] MM, para. 10.8.
[10] IM, Annex 113, Vol. 3.

vessel had paid to islands "*situated off the port of Sandakan*", on which it "had fixed tablets and flags"[11]. The despatch concluded that the British Government should inform the U.S. authorities that the BNBC had been administering those islands and request that they remove any flags and tablets placed on them. A map was attached to the despatch according to para. 24 which reads:

> "24. For the information of the Secretary of State, I have attached a Map, showing clearly the respective spheres of influence and control."[12]

A.20 It should be noted that the BNBC did not refer in that paragraph to a particular delimitation line, but simply to "spheres of influence and control" appearing on a map. The purpose of the map, readily understandable from the context of the despatch, was to notify the U.S. authorities of the limit of the BNBC's administration of islands in the northern part of North Borneo. The Dutch Government was not privy to these communications since they did not touch upon their possessions or their interests.

A.21 The line appearing on Map 6 of Malaysia's Memorial, extending south of the land boundary dividing British North Borneo from the Dutch territories, appears however to include within the British sphere of influence territories which were indisputably Dutch. This fact alone is sufficient to undermine the significance of such a line.

A.22 Moreover, the southern limit of this line appears to be totally arbitrary, particularly if one considers the numerous other maps published subsequently, some of which have also been included in Malaysia's Atlas, which show a similar line stopping north of the disputed islands. Reference in this respect should be made to Maps 14, 17, 19, 20, 21, 22 and 25 of Malaysia's Atlas and Maps Nos. 8, 9, 10, 12, 14, 15, 16, 18 and 20 of Indonesia's Atlas. All these maps reflect the line described in Article I of the 1930 Convention between Great Britain and the United States setting out the definitive division of territorial possessions between the two States in the area, well to the north of the 4°10′ N latitude established by the 1891 Convention.

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[11] *Ibid.*, Annex 102, Vol. 3. Emphasis added.

[12] *Ibid.*

A.23 Thus, with regard to this map, it may be concluded as follows:

(a) The 1906 map was part of an arrangement between Great Britain and the United States concerning the administration of islands situated off the north-eastern coast of the island of Borneo, well to the north of the disputed islands. In any event, this arrangement was *res inter alios* as far as The Netherlands was concerned;

(b) The length of the line is unprecedented in the light of the rest of the map evidence. Moreover, the line appears to end arbitrarily at the 4° N parallel of latitude, well south of the land boundary of British North Borneo and it inexplicably extends further south of what was unquestionably Dutch territory.

C. Map 1 of Malaysia's Atlas: *Schetskaart Van De Residentie Zuider – En Oosterafdeeling Van Borneo* (Extract)

A.24 Malaysia then considers a Dutch map reproduced as Map 1 in Malaysia's Atlas and as Insert 2 at page 6 of Malaysia's Memorial. According to Malaysia, this map shows that the Dutch Government recognised that the 1891 Convention boundary stops at the east coast of the island of Sebatik, and that it also shows that "the group of islands (Sipadan, Mabul (Maboel), Kapalai, Ligitan, Danawan and Si Amil (Siamil)) appertain to the 'Gouvt van Britisch Noord-Borneo'"[13].

A.25 It should be noted that Malaysia has failed to provide any information regarding the origin of this map other than that it was published in 1913 by the Netherlands Indies Government Topographical Office, thus asserting that it is "the first official map (on a scale of 1:750,000) of the Southern and Eastern Division of Borneo"[14].

---

[13] MM, para. 10.9.

[14] *Ibid.*

A.26 As recalled in para. 7.91 above, the purpose of this map was to provide a topographical description of the area and not to show attribution of sovereignty over territory. The map offers no basis for Malaysia's allegation that the islands of Sipadan, Ligitan, Mabul, Kapalai, Dinawan and Si Amil form a "group" of islands or that they are attributed by this map to the Government of British North Borneo. No attribution of sovereignty over the disputed islands is given, by means of colour coding or otherwise.

A.27 In Indonesia's view, a much more significant feature of the map is the fact that, were the line running across the island of Sebatik on this map to be extended eastward, the islands of Ligitan and Sipadan, given their position, would fall on the Dutch, now Indonesian, side of the line.

D. Map 13 of Malaysia's Atlas: *Plan of Semporna, District of Lahad Datu*, Survey Department, Jesselton, 1935

A.28 Next in Malaysia's analysis is a map dated 1935 entitled *Plan of Semporna, District of Lahad Datu* issued by the Survey Department at Jesselton. According to Malaysia, the mere fact that the islands of Ligitan and Sipadan appear on the map is evidence of their appurtenance to Great Britain. However, a closer examination of this map reveals that the disputed islands, like other offshore features situated in Sibuko Bay, are not depicted as part of the District of Lahad Datu which is identified as the territory included within the cross-dashed boxes.

A.29 As to the significance of the words "Bird Sanctuary" which appear on the island of Sipadan, it will be recalled that, as noted in Chapter VII of Indonesia's Counter-Memorial, the notice published in the *Official Gazette* of 1 February 1933 concerning a megapode reserve, and similar measures regarding the collection of turtle eggs, provides no evidence that the British colonial authorities acted as sovereign over the island of Sipadan[15].

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[15] Paras. 7.36- 7.38.

E. Map 14 of Malaysia's Atlas: *The State of North Borneo*, 1941

A.30 This is similarly the case regarding the next map produced by Malaysia, which is entitled *The State of North Borneo* and was published in 1941. According to Malaysia, this map demonstrates both "a clear understanding that Sipadan was part of the State of North Borneo […] and a deliberate intention to include it" within the limits of that State[16].

A.31 Malaysia's assertion that the map demonstrates a "clear understanding" that Sipadan was part of the State of North Borneo is misleading and erroneous. Indonesia would point out that the map shows a number of features and territorial possessions which were indisputably *not* part of the State of North Borneo, for example, the southern part of the island of Sebatik and the mainland part of the Dutch territory. In the light of this, the inclusion of Ligitan and Sipadan in this map has no significance for purposes of attribution of territory. In Indonesia's view, much more relevant is the fact that this map shows a line labelled "Boundary between the Philippine Archipelago and the State of North Borneo", very similar to the line drawn on Map 6 discussed above, which stops well to the north of the disputed islands, undermining the arguments made by Indonesia regarding the "red line" marked on the latter map.

F. Maps 15 and 16 of Malaysia's Atlas: *Tawau*, Director of National Mapping, Malaysia, 1964; *Pulau Sebatik*, Director of National Mapping, Malaysia, 1970

A.32 Malaysia then introduces two maps published in 1964 and 1970 by the Malaysian Director of National Mapping, which, it alleges, show that the "boundary line clearly stops at the east coast" of Sebatik[17]. One map is entitled *Tawau* and shows a small part of the eastern portion of Sebatik with a 4°10' line running across the island but not extending offshore. The map carries the disclaimer, "This map must not be considered an authority on the delimitation of international boundaries and does not in any event cover the islands in dispute".

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[16] MM, para. 10.11.

[17] MM, para. 10. 2.

A.33 The second map, which is dated 1970, is entitled *Pulau Sebatik* and only includes the section of this island nearest to the mainland and is therefore totally irrelevant. The map also carries the following disclaimer: "This map is not an authority for boundaries".

A.34 It is worth noting, in this respect, that Indonesia included two maps in its Memorial, entitled *Pulau Sebatik* and *Tawau* and dated 1964 and 1965 respectively[18], which were both prepared by the United Kingdom Ministry of Defence for the Director of National Mapping, Malaysia, both of which show an offshore extension of the 4°10' N boundary line beyond Pulau Sebatik. Even admitting, for the sake of argument, that the probative value of these maps is diminished by the fact that they carry similar disclaimers to those appearing on the maps included in Indonesia's Atlas, they undermine any relevance of the maps presented by Malaysia.

G. Map 17 of Malaysia's Atlas: *The Colony of North Borneo*, Survey Department, Jesselton, 1952

A.35 The remaining maps introduced by Malaysia in Chapter 10 of its Memorial are inconsistent in their portrayal of offshore boundaries. The 1952 map of *The Colony of North Borneo*[19], compiled and drawn by the Survey Department, Jesselton, does show Ligitan and Sipadan (the latter outside the framework of the map), but it also shows the southern part of the island of Sebatik and the adjacent landmass, which were indisputably Dutch possessions. It should also be noted that, here too, the line portraying the limit of the Philippine Archipelago stops well to the north of the islands of Sipadan and Ligitan.

H. Map 18 of Malaysia's Atlas: *Lahad Datu Police District*, 1958

A.36 Malaysia then refers to a 1958 map of the Lahad Datu Police District[20], arguing that the disputed islands fell within the police district, apparently on the basis that they lie on one side of what appears to be an offshore district boundary line marked on the map. However, the provenance of and justification for this line, which reflects no other line depicted on any other maps submitted to the Court, are not indicated on this map or elsewhere by Malaysia.

---

[18] Maps No. 11 and 13 in Indonesia's Map Atlas.
[19] MM, para. 10.13.
[20] *Ibid.*, para. 10.14.

A.37 Indeed, no explanation is given for the source of this map generally, and Malaysia's reference to the map's legend, which states "Compiled from various sources and drawn by S.M. Ross, Lahad Datu, 1958", is unsatisfactory given its general nature and failure to make reference to any official source. In the light of the above, this map should be viewed as of minimal relevance.

L. Map 19 of Malaysia's Atlas: *Map Showing Territorial Waters and Continental Shelf Boundaries of Malaysia*, Director of National Mapping, Malaysia, 1979

A.38 The next map in Malaysia's collection is entitled *Map Showing Territorial Waters and Continental Shelf Boundaries of Malaysia*, dates from 1979 and was published and printed by the Director of National Mapping, Malaysia[21]. This map has already been discussed by Indonesia in its Memorial[22]. It includes the disputed islands within Malaysia's maritime zone, but no reference is made to any legislation to support this boundary line. If compared with other Malaysian maps dating from 1963 to 1974 all of which depict the offshore extension of the line established by the 1891 Convention[23], this map, prepared 10 years after the dispute emerged in 1969, cannot be considered as having any probative value and merely illustrates the extent to which Malaysia's claims have been artificially constructed and represent an encroachment upon the agreed 1891 boundary line.

A.39 Malaysia compares this 1979 map with the map annexed to Indonesia's Act No. 4 of 18 February 1960[24], remarking that Sipadan was not included as a base-point. This issue has been dealt with in Indonesia's Memorial[25], but for the convenience of the Court, Indonesia's position will be summarised again here.

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[21] MM, para. 10.15. This map had also been reproduced by Indonesia as Map No. 21 in its Map Atlas.

[22] IM, paras. 8.59- 8.69.

[23] See, for example, Maps No. 11, 12, 13, 14, 16, 18 and 20 of Indonesia's Map Atlas.

[24] Map No. 7 in Malaysia's Map Atlas.

[25] IM, paras. 8.11-8.13.

A.40 This legislation was drawn up in haste at a time when Indonesia's priority was to gain recognition for the notion of archipelagic waters at the Second United Nations Conference on the Law of the Sea[26]. More concerned with that important issue, Indonesia did not make a detailed inventory of the approximately 17,000 islands making up the Indonesian archipelago and as a result many of them were overlooked.

A.41 In this respect, it should be recalled that Malaysia recognised Indonesian sovereignty over a number of islands that were not specifically included in the 1960 Act[27].

J. Maps 20, 21 and 22 of Malaysia's Atlas: *Semporna*, Directorate of National Mapping, Malaysia, 1967; *Malaysia Timor Sabah*, Directorate of National mapping Malaysia, 1972; *Operational Navigation Chart L –11*, U.K. Director of Military Survey, 1978

A.42 The inconsistencies in the maps presented by Malaysia are recognised by Malaysia itself in an attempt to justify two Malaysian maps which had also been included in Indonesia's Atlas as Maps No. 15 and 18, and a further map published by the British Government in 1978, which show a boundary line between Indonesia and Malaysia extending out to sea following the line resulting from the 1891 Convention[28].

A.43 Malaysia dismisses these maps as insignificant because they all carry disclaimers. Although Indonesia acknowledges the role of a disclaimer in evaluating the probative weight of map evidence, it has to be recognised that the importance of disclaimers such as those appearing on the maps in question, is of diminished effect in the face of a consistent pattern delineating the boundary in a particular position. What is important is the fact that these official maps represent the considered view of the Malaysian Government as to the outer limit of its territorial claims.

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[26] See, Affidavit of Admiral Sunardiman, IM, Annex B, Vol. 5.

[27] For example, Pulau Tokong Boro, Pulau Pengibu, Tandjung Parit and Pulau Batu Mandi. IM, para. 8.12.

[28] MM, paras. 10.17-10.19.

A.44 Indeed, the Malaysian maps mentioned in Malaysia's Memorial depicting the islands of Sipadan and Ligitan on the Indonesian side of the line are not unique. They are merely some examples of a number of maps issued by Malaysian authorities prior and subsequent to the 1969 *status quo* agreement showing the offshore extension of the line between Indonesia and Malaysia running through the island of Sebatik and into Sibuko Bay along the 4° 10' N latitude as provided for under the 1891 Convention. These maps include:

- A map entitled *Pulau Sebatik* published for the Director of National Mapping of Malaysia by the British Ministry of Defence in 1964 (Map No. 11 in Indonesia's Atlas);
- A map entitled *Malaysia Timor Sabah* drawn by the Department of Lands and Surveys of Sabah in 1964 and printed and published by the Malaysian Directorate of National Mapping in 1966 (Map No. 12 in Indonesia's Atlas);
- A map entitled *Tawau* published for the Director of National Mapping of Malaysia by the British Ministry of Defence in 1965 (Map No. 13 in Indonesia's Atlas);
- A map by the same title issued by the Malaysian Directorate of National Mapping in 1967 (Map No. 14 in Indonesia's Map Atlas);
- A map entitled *Metalliferous Mineral Prospecting Licenses* issued by the Malaysian Ministry of Lands and Mines in 1968 (Map No. 16 in Indonesia's Map Atlas);
- A map called *Malaysia Timor Sabah* issued by the Malaysian Directorate of National Mapping in 1972 (Map No. 18 in Indonesia's Map Atlas);
- A map entitled *Negeri Sabah, Population and Housing Census. Map Showing Distribution of Population* prepared and published by the Malaysian department of Statistics in 1974 (Map No. 20 in Indonesia's Map Atlas);

- A map entitled *Malaysia, Singapura & Brunei: pemerentahan (Political map of Malaysia, Singapore & Brunei)*, issued by The Directorate of National Mapping of Malaysia and dated 1966. This map, which is being reproduced for the first time by Indonesia as Map A.1 and can be viewed overleaf, shows the 1891 line running through the island of Sebatik and extending in a seaward direction[29].

A.45 Similarly, there are examples of British maps attributing the disputed islands to Indonesia. Map A.2, displayed after Map A.1, is a Top Secret map of the island of Borneo issued by the Geographical Section of the British General Staff in 1944. As can be seen, once more, the 1891 line extends east of the island of Sebatik, showing unequivocally that the British view of the 1891 delimitation line was that the boundary did not terminate on the eastern-most point of the island of Sebatik.

A.46 Another example of the British official position is a 1973 Tactical Planning Chart (No. L 11-C) issued by the British Ministry of Defence and a copy of which is reproduced in Indonesia's Map Atlas as No. 19. As can be seen from the enlargement of this map contained in Indonesia's Atlas, the map shows the 4° 10' N latitude line running across Sebatik island and extending into the sea in an easterly direction.

Section 3. Conclusions

A.47 The cartographic material deployed by Malaysia is contradictory and does not provide any evidence to support Malaysia's claim to the disputed islands. In fact, Malaysia has not succeeded in counteracting the consistent cartographic pattern shown in Indonesia's Memorial and by the further maps reproduced in this Counter-Memorial which confirms that the line resulting from the 1891 Convention extended seaward from the island of Sebatik, thus dividing the territorial possessions of the Parties and leaving the islands of Ligitan and Sipadan under Dutch or Indonesian sovereignty.

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[29] The map can be found in the Library of the School of Oriental and African Studies in London. The Library holds only the E. sheet of a two-sheet map.

A.48 The British cartographic evidence presented by Malaysia is either irrelevant for purposes of sovereignty – for example, the British nautical charts – or its importance is undermined by the existence of other British maps showing Sipadan and Ligitan as Dutch possessions or as falling on the Indonesian side of the line agreed upon in the 1891 Convention.

A.49 As regards Malaysia's official cartography, Indonesia has shown that, since independence in 1963, Malaysia has consistently represented the disputed islands as forming part of Indonesia's possessions. Similarly, a number of Malaysian maps created prior to 1969 depicted the 1891 Convention line as running across the island of Sebatik and extending in an easterly direction along the 4° 10' N line of latitude. The position taken by Malaysia in those years is particularly significant as it represents the considered and objective view of that Government as to the extent of its territorial sovereignty.

A.50 After 1979, long after the dispute arose, Malaysian maps changed in a self-serving manner to depict the islands as falling under Malaysian sovereignty. However, as the award in the *Beagle Channel* arbitration demonstrates, such tactical changes in official cartography serve only to reinforce the legal significance to be attached to the consistent pattern displayed in the earlier cartography[30].

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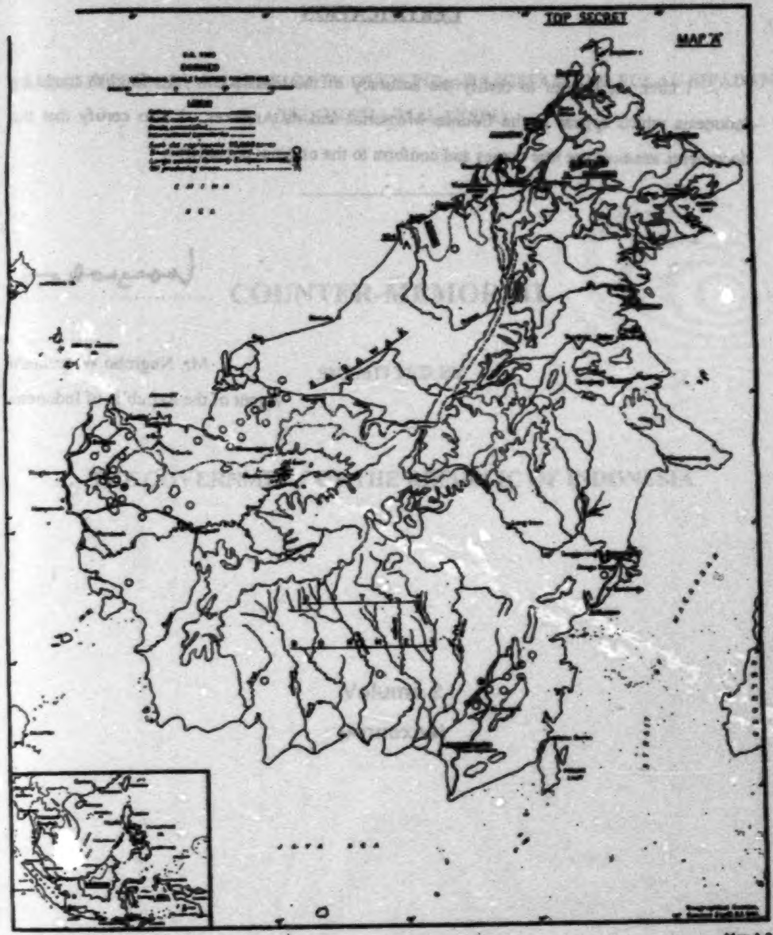
[30] *Beagle Channel* arbitration, *International Law Reports*, (ed. E. Lauterpacht), Vol. 52, p. 93 at p. 121, paras. 148-162.

Map A.1


TOP SECRET
MAP 'A'
BORNEO
C H I N A
S E A
J A V A   S E A

Map A.2

CERTIFICATION

I have the honour to certify the accuracy of the translations into English made by Indonesia which appear in the Counter-Memorial and its Annexes. I also certify that the documents annexed are true copies and conform to the original documents.

Mr. Nugroho Wisnumurti
Agent of the Republic of Indonesia

CASE CONCERNING SOVEREIGNTY OVER PULAU LIGITAN AND PULAU SIPADAN
(INDONESIA/MALAYSIA)

COUNTER-MEMORIAL

SUBMITTED BY

THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

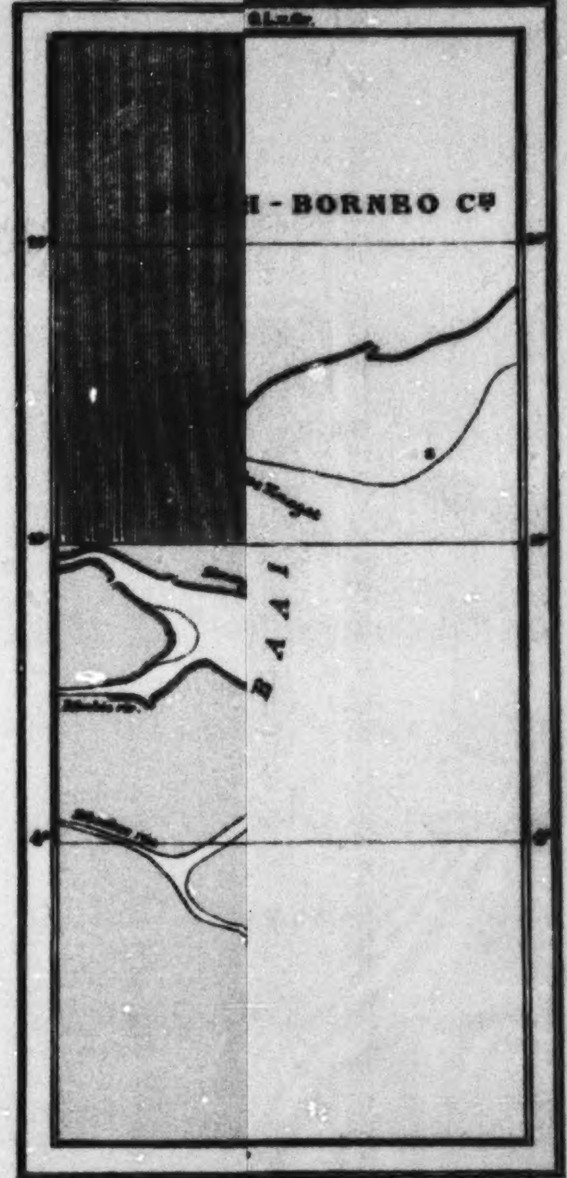
Volume 2
(Annexes)

2 AUGUST 2000

Annex 1

MAP ENTITLED *SINT-LUCIA BAAI (N.O. BORNEO)*, FROM *TIJDSCHRIFT VAN HET KONINKL. NEDERL. AARDRIJKSK. GENOOTSCHAP* (JOURNAL OF THE ROYAL NETHERLANDS GEOGRAPHICAL SOCIETY), 1901

Kaart No. IX . Nederl. Aardrijksk. Genootschap 1891.

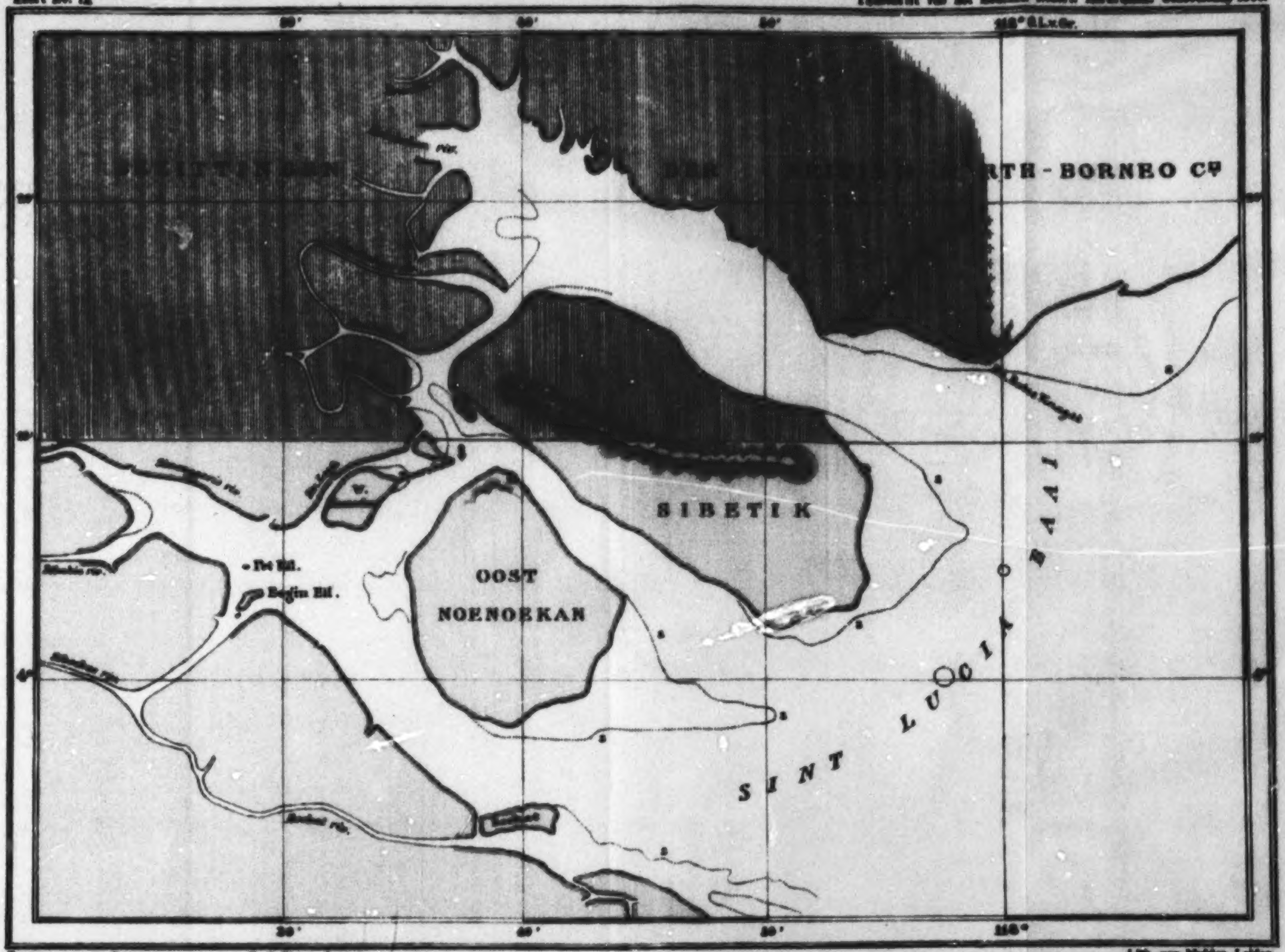

O.L.v.Gr.
-BORNEO Cº
BAAI

Boekhandel en Drukkerij v Lith. van Mulder, Leiden.

ue Ned. gebied te zijn.
Borneo.

LEGENDA

rmeeken en gebied Sibotik.)


30'
40'
50'
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NORTH-BORNEO Cº
riv.
10'
4°
Pet Eil.
Begin Eil.
OOST NOENOEKAN
SIBETIK
SINT LUCIA BAAI
118°

Boekhandel en Drukkerij voorheen E. J. Brill, Leiden.

Lith. van Mulder, Leiden.

SINT-LUCIA BAAI (N.O. BORNEO.)

Schaal 1:400.000.

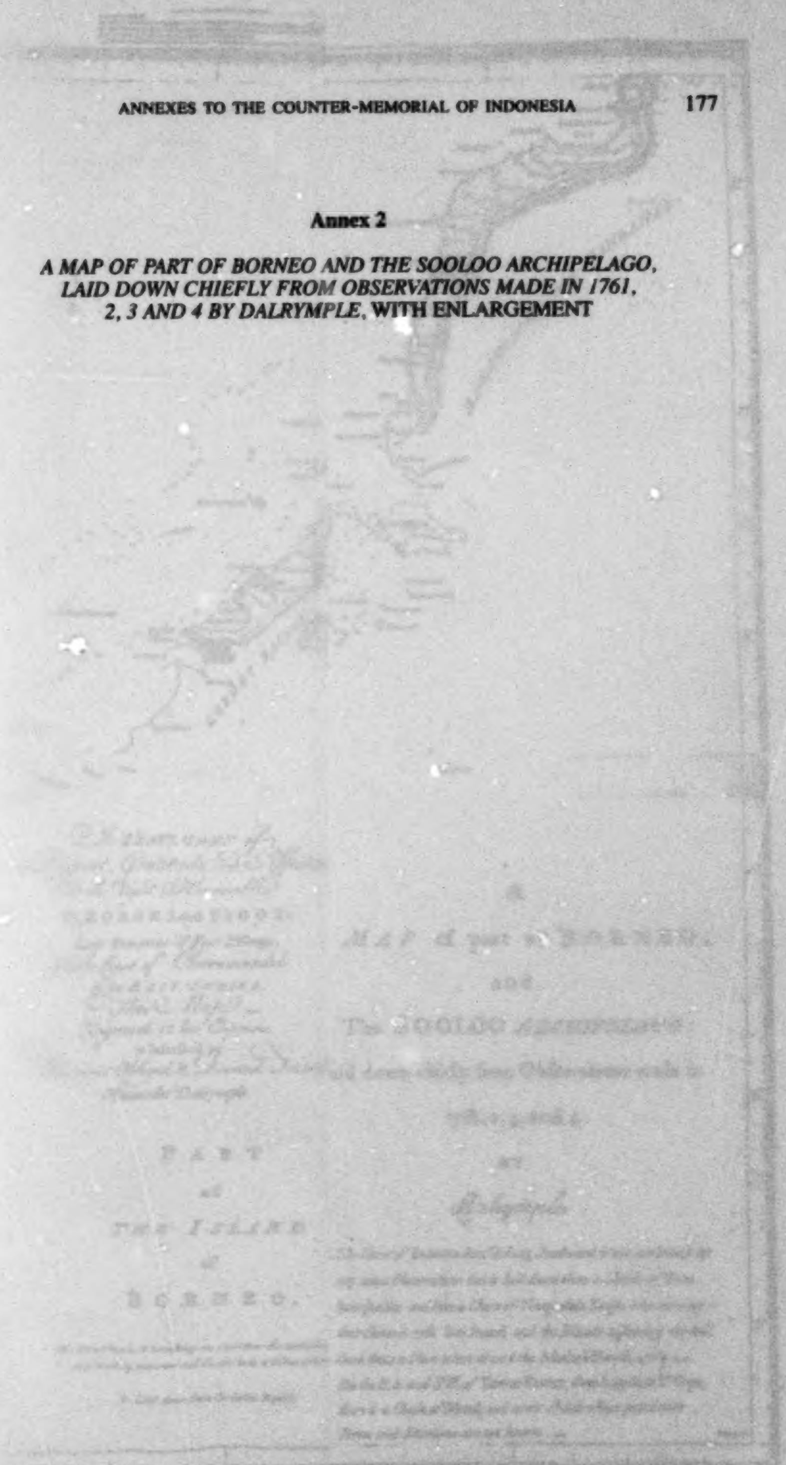
LEGENDA.

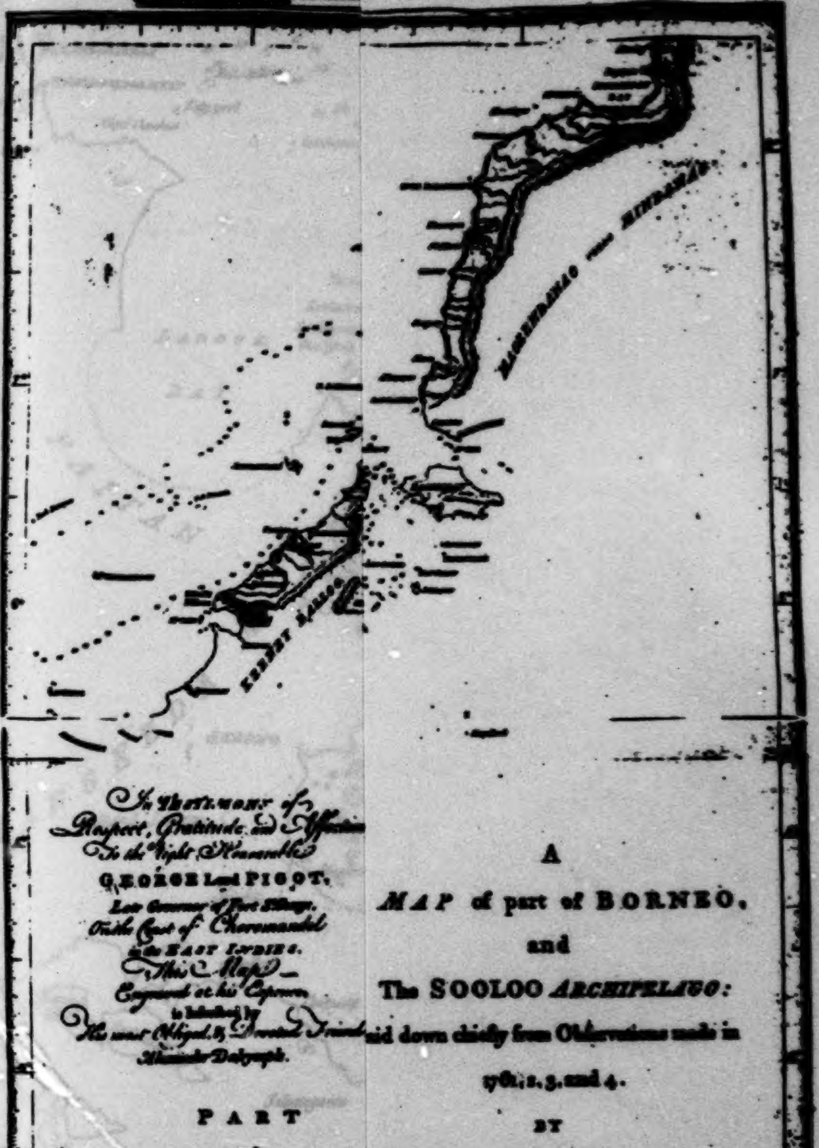
- + + + + + *Het terrein benoorden deze lijn werd vroeger door het N.I.Gouvᵗ geacht tot Boeloengan te behooren en dus Ned. gebied te zijn.*
- *Grenslijn (met grensteekens) bij tractaat van 1891 aangenomen tusschen Nederlandsch en Britsch Noord-Oost Borneo.*
- ▨ *Terrein dat ten gevolge der nieuwe grensregeling van Nederlandsche in Britsche handen is overgegaan.*
  (Engeland maakte oorspronkelijk ook aanspraak op het land bezuiden 4° 20' tot de Sibakoe riv. en op O. Noenoekan en geheel Sibetik.)
- ● *Observatie plaats der Nederlandsche en Britsche zee-officieren (1891.)*

N.B. Deze kaart is een verkleinde copie van die van het Hydrographisch Bureau te Batavia (1893.)

Annex 2

A MAP OF PART OF BORNEO AND THE SOOLOO ARCHIPELAGO, LAID DOWN CHIEFLY FROM OBSERVATIONS MADE IN 1761, 2, 3 AND 4 BY DALRYMPLE, WITH ENLARGEMENT

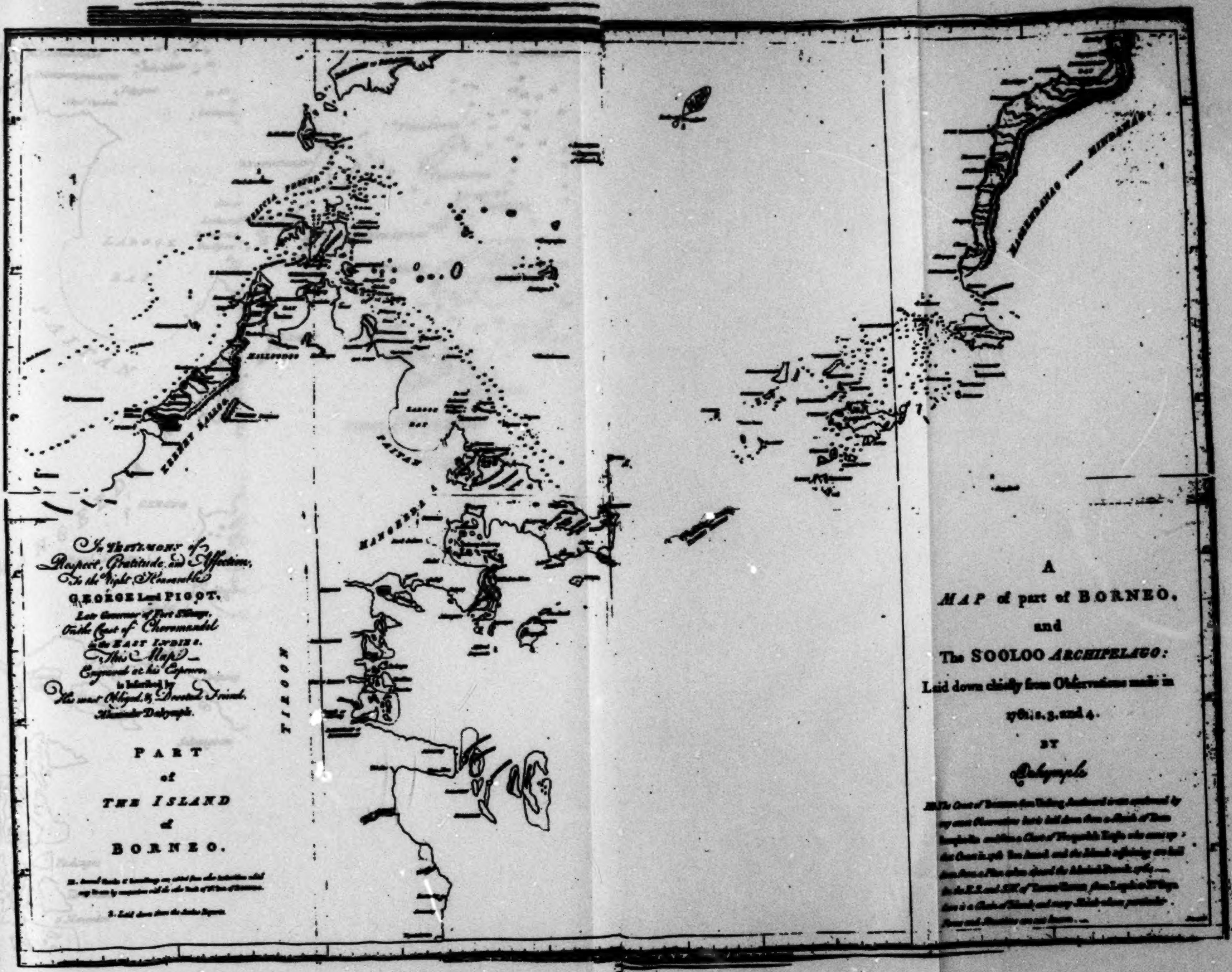

A
MAP of part of BORNEO
and
The SOOLOO ARCHIPELAGO
laid down chiefly from Observations made in
1761, 2, 3 and 4,
by
A. Dalrymple
PART
of
THE ISLAND
of
BORNEO.

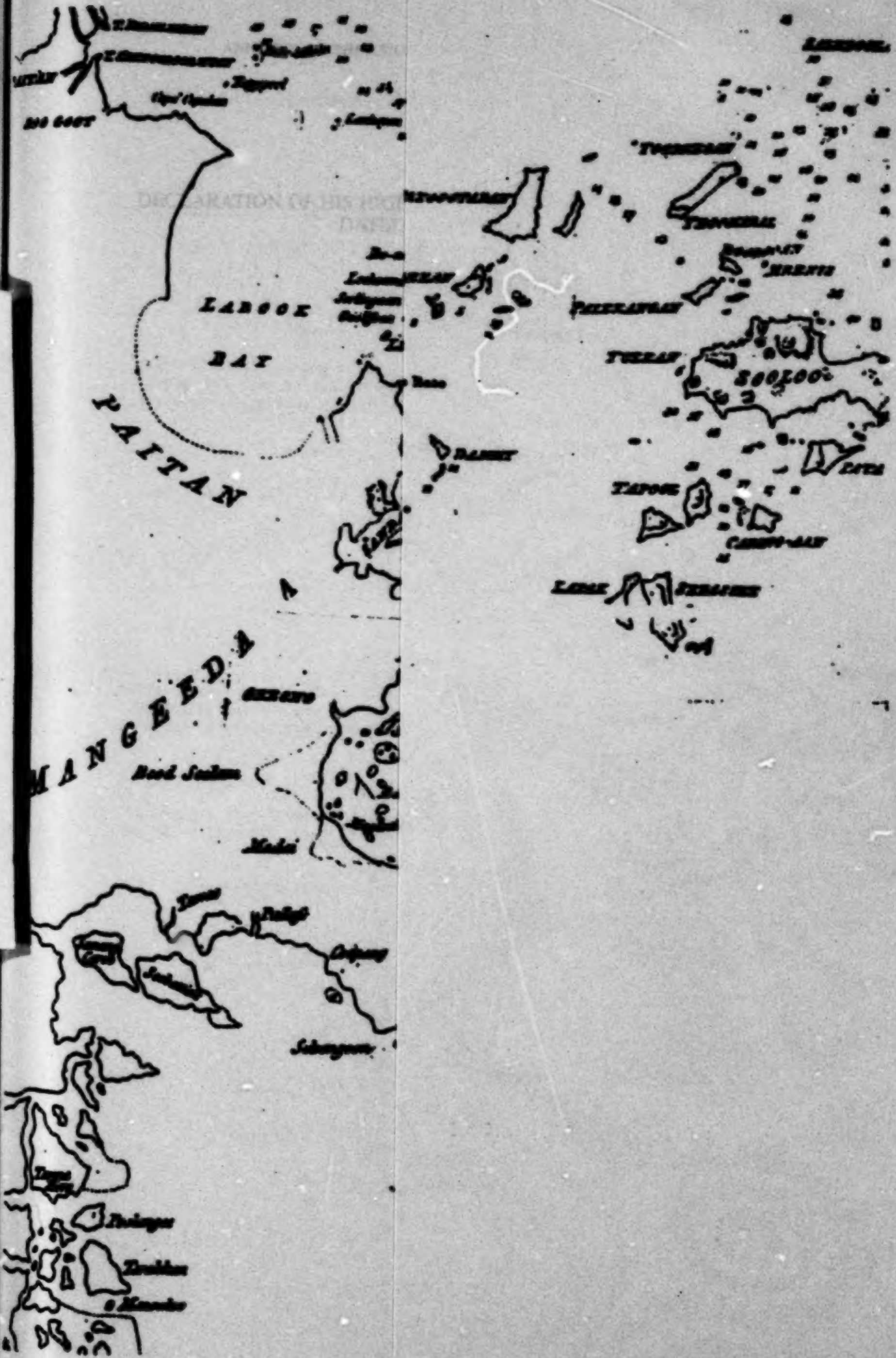


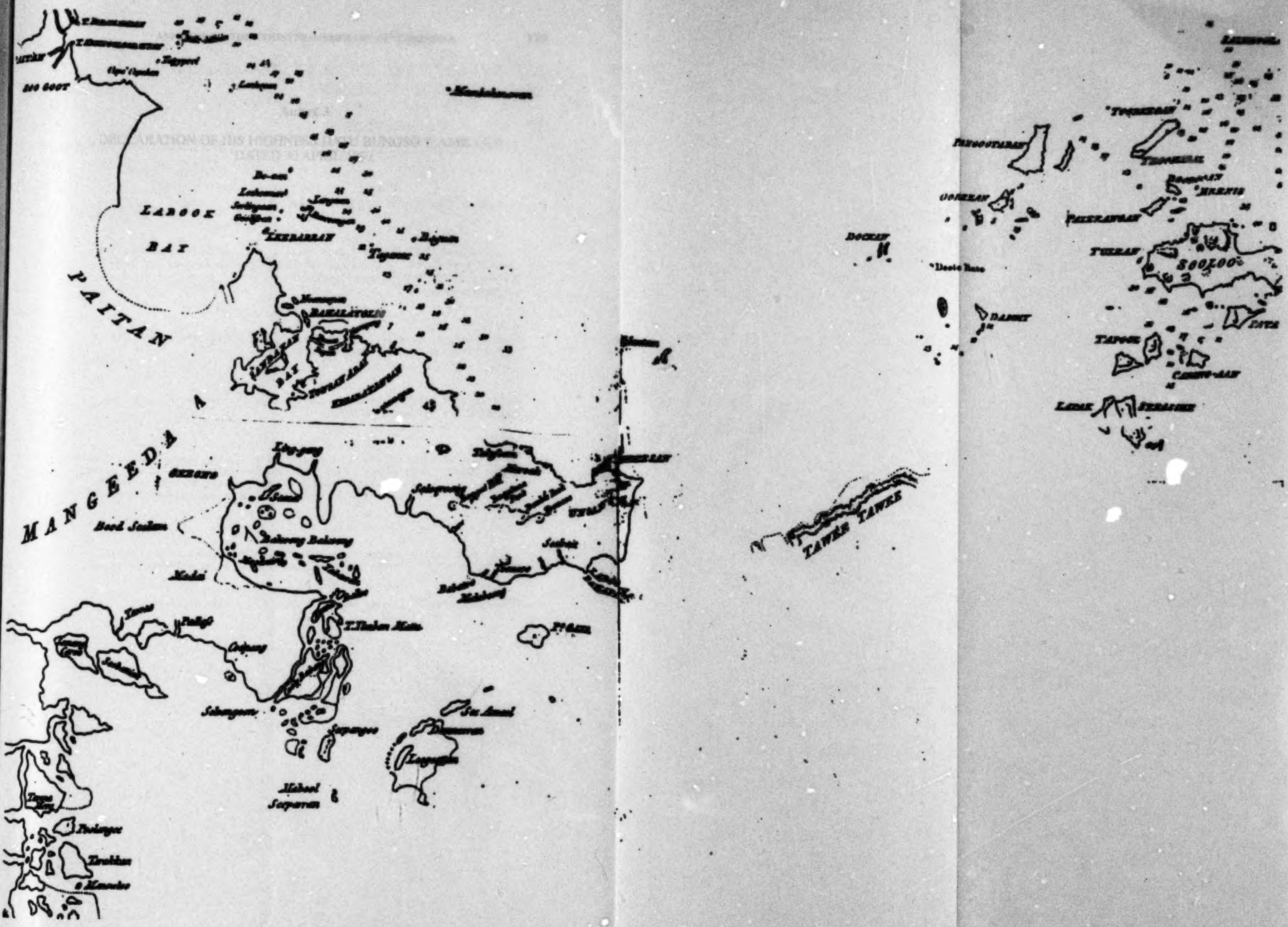
In Testimony of
Respect, Gratitude and Affecti
To the Right Honourable
GEORGE Lord PIGOT,
Late Governor of Fort St. George,
On the Coast of Choromandel
in the EAST INDIES.
This Map
Engraved at his Expence
is Inscribed by
His most Obliged & Devoted Friend
Alexander Dalrymple.

PART
of
THE ISLAND
of
BORNEO.

A
MAP of part of BORNEO,
and
The SOOLOO ARCHIPELAGO:
aid down chiefly from Observations made in
1761, 2, 3, and 4.
BY
A. Dalrymple

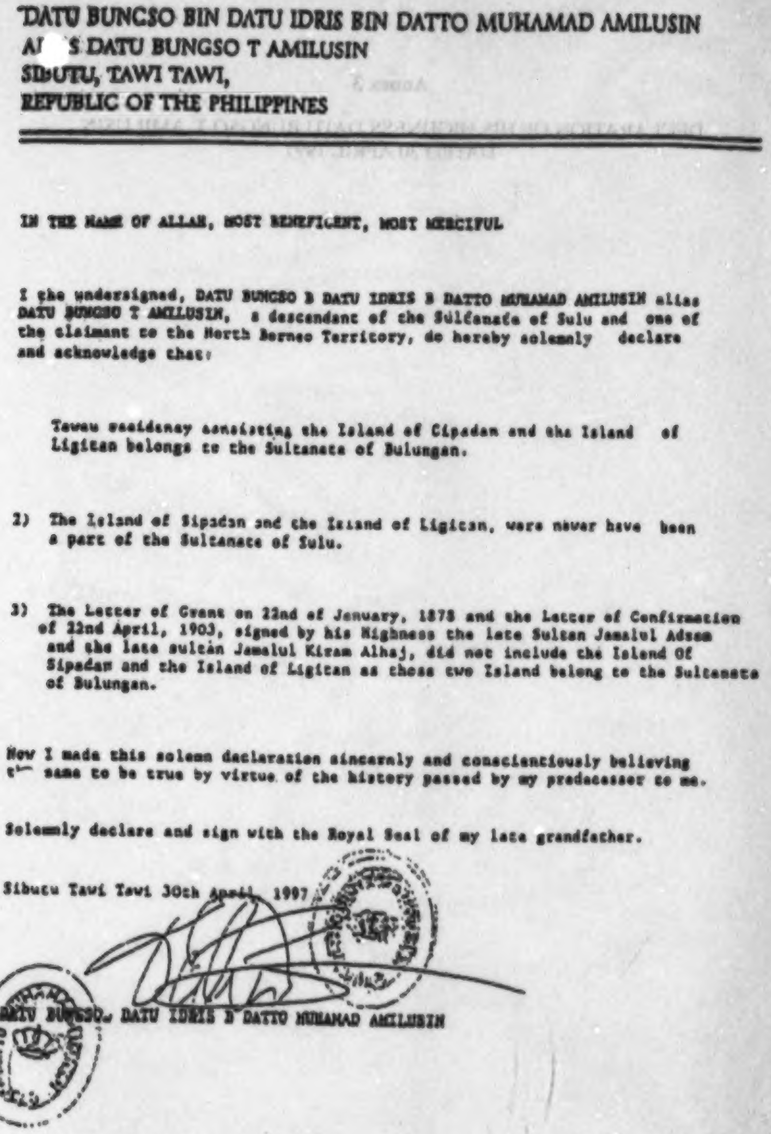
In Testimony of
Respect, Gratitude, and Affection,
To the Right Honourable
GEORGE Lord PIGOT,
Late Governor of Fort St George,
On the Coast of Choromandel
in the EAST INDIES.
This Map
Engraved at his Expence
is Inscribed by
His most Obliged, & Devoted Friend,
Alexander Dalrymple.
PART
of
THE ISLAND
of
BORNEO.
[illegible]
[illegible]
TIROON
A
MAP of part of BORNEO,
and
The SOOLOO ARCHIPELAGO:
Laid down chiefly from Observations made in
1761, 2, 3, and 4.
BY
Dalrymple
[illegible]


LABOOK
BAY
PAITAN
MANGEEDA
Bood Sedam
Madai
SOOLOO
TAPOOL
Tawao
Tooloogan


LABOOK
BAY
PAITAN
MANGEEDA
Madai
TAWEE TAWEE
DOCKAN
Deote Bato
SOOLOO
TAPOOL
43

Annex 3

DECLARATION OF HIS HIGHNESS DATU BUNGSO T. AMILUSIN, DATED 30 APRIL 1997



DATU BUNGSO BIN DATU IDRIS BIN DATTO MUHAMAD AMILUSIN
ALIAS DATU BUNGSO T AMILUSIN
SIBUTU, TAWI TAWI,
REPUBLIC OF THE PHILIPPINES

IN THE NAME OF ALLAH, MOST BENEFICENT, MOST MERCIFUL

I the undersigned, DATU BUNGSO B DATU IDRIS B DATTO MUHAMAD AMILUSIN alias DATU BUNGSO T AMILUSIN, a descendant of the Sultanate of Sulu and one of the claimant to the North Borneo Territory, do hereby solemnly declare and acknowledge that:

Tawau residency consisting the Island of Cipadan and the Island of Ligitan belongs to the Sultanate of Bulungan.

2) The Island of Sipadan and the Island of Ligitan, were never have been a part of the Sultanate of Sulu.

3) The Letter of Grant on 22nd of January, 1878 and the Letter of Confirmation of 22nd April, 1903, signed by his Highness the late Sultan Jamalul Adzam and the late sultán Jamalul Kiram Alhaj, did not include the Island Of Sipadan and the Island of Ligitan as these two Island belong to the Sultanate of Bulungan.

Now I made this solemn declaration sincerely and conscientiously believing the same to be true by virtue of the history passed by my predecessor to me.

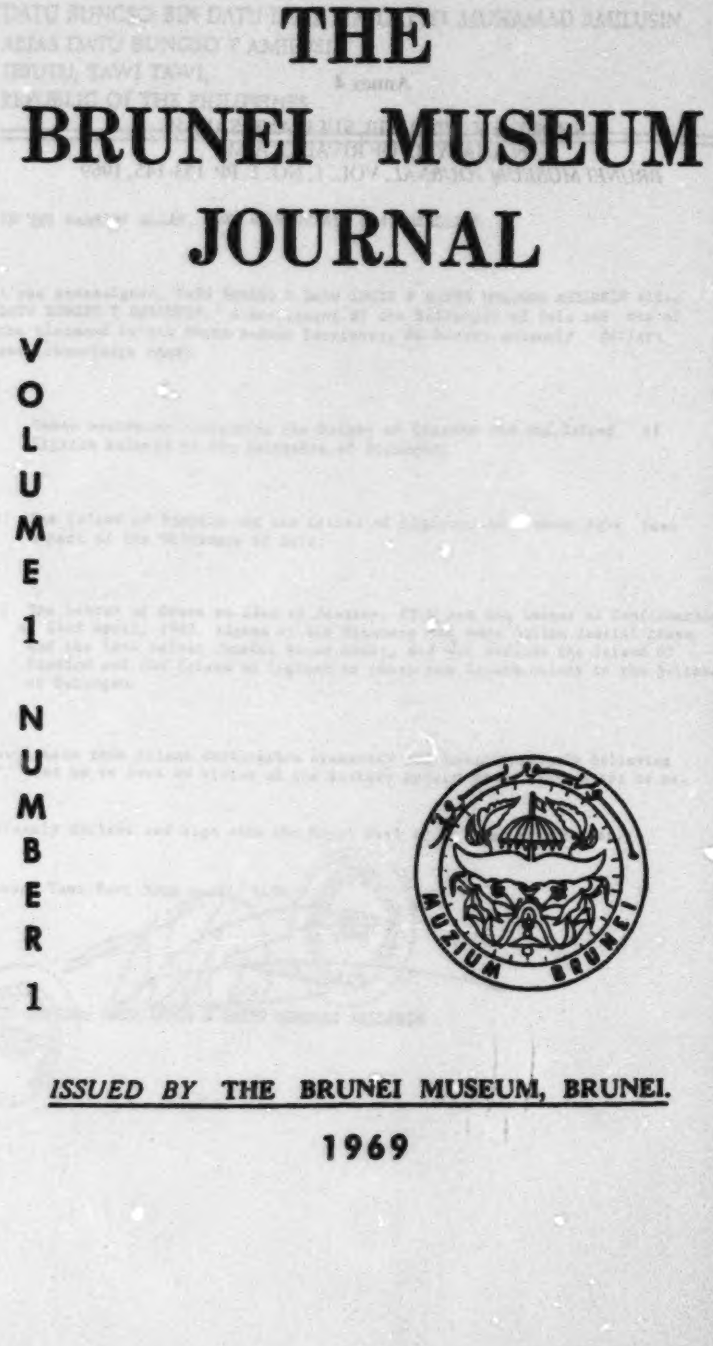
Solemnly declare and sign with the Royal Seal of my late grandfather.

Sibutu Tawi Tawi 30th April, 1997

DATU BUNGSO B DATU IDRIS B DATTO MUHAMAD AMILUSIN

Annex 4

SHORT, B.K., "BRUNEI, SULU AND SABAH: AN ANALYSIS OF RIVAL CLAIMS", *BRUNEI MUSEUM JOURNAL*, VOL. 1, NO. 1, PP. 133-145, 1969



THE
BRUNEI MUSEUM
JOURNAL

VOLUME 1 NUMBER 1

ISSUED BY THE BRUNEI MUSEUM, BRUNEI.

1969

BRUNEI, SULU AND SABAH:

an analysis of rival claims

by

*Brock K. Short**

On June 22, 1962, the Republic of the Philippines officially informed the United Kingdom that it wished to discuss its claims to Sabah. The timing of this request, so long delayed, can be attributed to the serious consideration being given to the formation of Malaysia, to the election of President Macapagal who has a long record of concern for the Philippines' claim to Sabah,[1] and to a campaign by the *Philippines Free Press* publicizing the Philippines' claim.[2] The basis of this claim rests on an historical claim to Sabah via the Sulu Sultanate, which will be analysed in Part I, and on the imagined threat to Philippine security that the formation of Malaysia has posed, which will be very briefly discussed in Part II.

Part I

It has been assumed by the supporters of the Philippine claim that Sabah (north Borneo from Kimanis Bay to Sebatik Island) was given to the Sultan of Sulu by the Sultan of Brunei in 1704, or some other time in the eighteenth century, for support in a dynastic quarrel.[3] In 1966, Leigh Wright, while admitting that Sulu assisted the victorious side in a Brunei civil war, questioned whether any cession, to Sulu was ever made[4] by referring to the denials by Brunei Sultans of this cession, as noted by Low in 1880, Treacher in 1889, and Hughes-Hallett in 1940. Although it is true that all three recorded denials by Brunei of the cession,[5] Low and Huges-Hallett are very explicit in explaining that Brunei's denial developed relatively recently and has been motivated by desires to avoid the shame of admitting that Sulu settled a dynastic dispute and to deny the cession. Low writes, "The land from the North as far westward as Kimani"[6] was given to Sulu, and also explains, "The present Yang di-Pertuan would never let me see the copy of the *Selesilah*, which he is known to possess, and Pangiran Kasuma, when he heard that I had obtained the authentic copy from which the text is taken, said that it contained the true version.........."[7] In addition, he notes that in the 1760's Brunei did not object to Sulu ceding Sabah to the East India Company. For his part, Hughes-Hallett states, "The Sultan of Sulu, for his assistance in the civil war was granted dominion over the territory in the north, a large part of which is now Dutch Borneo and British North Borneo; .... The annals and traditions [in Brunei] are conflicting and untruthful about this period, as much from a patriotic reluctance to admit the part played by the Sultan of Sulu and the reward granted (or seized?), as from the fact that the civil war split the Bruneis into two factions; .... By the beginning of the seventeenth century, Brunei had probably ceased to have any sovereignty over the east of Borneo........."8 Treacher's negative attitude to Sulu's claim can be explained by his being unaware of the true *tarsilas*, or by his being the British North Borneo Company's governor in Sabah, and thereby by his having a vested interest in the denial. In addition to Low and Hughes-Hallett, Rennell writing in 1763, described Sabah as a dependency of Sulu.9 It therefore can be concluded that Sulu had *de jure* control of Sabah, but Wright is justified in wondering whether Sulu ever established *de facto* control, because in 1739 Sulu joined Spain in a raid on the *Orang Tedong* (= "Tirones" = "Camucones" cf. Bajau) of North Borneo and the off-shore islands because "......... They [the *Orang Tedong*] interfered with the *raids* organized by the Sulus".10 If the Sulus were in the habit of raiding Sabah it is certain that they had established no government there.

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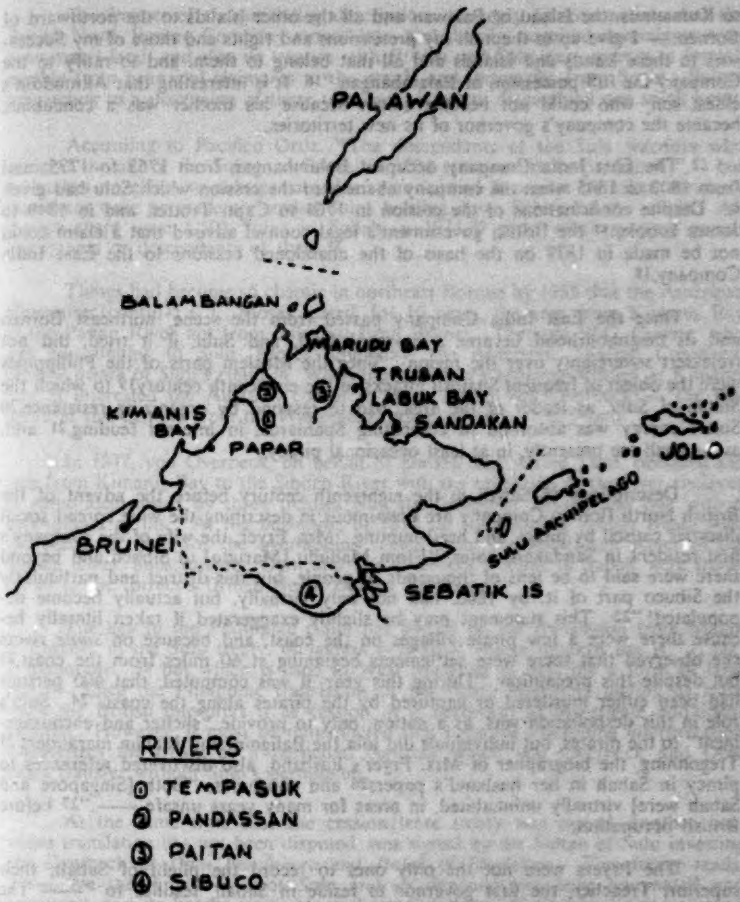
* I wish to thank Professor Tom Harrisson for his helpful comments on a previous draft of this paper and for his encouragement, without necessarily implicating him in the opinions or results of the paper, which I originally drafted as a graduate student in his Seminar at Cornell.

Whether Sulu ever established *de facto* control in Sabah before the third quarter of the eighteenth century is irrelevant because in the 1760's Sulu ceded Sabah (north Borneo from Kimanis Bay to Trusan — not the Trusan in the fifth district of Sarawak, but on the east coast of Sabah) and other dependencies (Palawan and the islands between it and Borneo) to the British East India Company.11 In 1761 Alexander Dalrymple, representing the East India Company, negotiated a treaty with Sultan Mu'izzuddin of Sulu, who had deposed his brother, Sultan Alimuddin I, over the latter's policies of centralization and of accommodation of Christianity. This treaty granted the East India Company exclusive European trading rights in Sulu's territories, and allowed the company to establish a trading post, which was done in 1762 with the occupation of Balambangan.12 After Manila was captured by the British on October 6, 1762, Alimuddin I, who had been a semi-captive of the Spanish, sought British help in recovering his sultanate. In 1763, Alimuddin I signed an offensive and defensive treaty with the East India Company which confirmed Mu'izzuddin's treaty of 1761, and allowed the company to found a trading post in Jolo, the capital of Sulu.13 Later in the same year, Sultan Alimuddin II, who had succeeded his father, Sultan Mu'izzuddin, concluded a treaty with the East India Company which reads in part, "Palawan from the Point of Canneepaan to the Point of Booleelahuyan and on the Borneo side from the Point of Sampang to the Point of Seepeelac — from this time forever these Lands do belong to the said Company of England......"14

When Dalrymple learned that the Philippines were to be returned to Spain by the Treaty of Paris (1763), and that Alimuddin I had signed a treaty with Spain similar to the one that he had signed with the East India Company, he decided that the cessions which the company had obtained could best be defended by arguing that Alimuddin I had not been competent to sign treaties on behalf of Sulu while Mu'izzuddin and Alimuddin II were sultans.15 Consequently, he abrogated the company's treaty with Alimuddin I but, at the same time, he restored Alimuddin I to the Sulu Sultanate with the East India Company's troops which were evacuating Manila in 1764, and negotiated another cession treaty. The new agreement declared, "I, Sultan Mahomud Alimuddin — do acknowledge to have sold to the English Company my right to the part of Borneo from Towson Abai


PALAWAN
BALAMBANGAN
MARUDU BAY
TRUBAN
LABUK BAY
SANDAKAN
KIMANIS BAY
PAPAR
JOLO
SULU ARCHIPELAGO
BRUNEI
SEBATIK IS
①
②
③
④
RIVERS
① TEMPASUK
② PANDASSAN
③ PAITAN
④ SIBUCO

to Kumannus, the Island of Palawan and all the other islands to the northward of Borneo. — I give up to them all my pretensions and rights and those of my Successors to these Lands and Islands and all that belong to them, and to ratify to the Company the full possession of Balambangan."[16] It is interesting that Alimuddin's eldest son, who could not become sultan because his mother was a concubine, became the company's governor of its new territories.

The East India Company occupied Balambangan from 1763 to 1775, and from 1803 to 1805 when the company abandoned the cession which Sulu had given it. Despite confirmations of the cession in 1769 to Capt. Trotter, and in 1849 to James Brooke,[17] the British government's legal counsel advised that a claim could not be made in 1879 on the basis of the abandoned cessions to the East India Company.[18]

Once the East India Company passed from the scene, northeast Borneo and its neighbourhood became a no-man's-land, and Sulu, if it tried, did not (re)assert sovereignty over the region. Since the Moslem parts of the Philippines were the object of frequent Spanish attacks in the eighteenth century[19] to which the Sultan of Sulu, as leader of the area, had to respond by organizing resistance,[20] Sulu's energy was absorbed in combating Spaniards, in internal feuding,[21] and, as we shall see presently, in at least occasional piracy.

Descriptions of Sabah in the eighteenth century before the advent of the British North Borneo Company are unanimous in describing the wide spread social disorder caused by piracy and head-hunting. Mrs. Pryer, the wife of the company's first resident in Sandakan, notes, "From Malludu [Marudu] to Sibuco and beyond there were said to be tens of thousands of people, but this district and particularly the Sibuco part of it, by 1860, had not only virtually, but actually become depopulated!"[22] This statement may be slightly exaggerated if taken literally because there were a few pirate villages on the coast, and because on *some* rivers she observed that there were settlements beginning at 60 miles from the coast,[23] but despite this precaution, "During this year, it was computed, that 400 persons had been either murdered or captured by the pirates along the coast."[24] Sulu's role in this despoliation was, as a nation, only to provide "shelter and encouragement" to the pirates, but individuals did join the Balignini and Illanun marauders.[25] Tregonning, the biographer of Mrs. Pryer's husband, also discovered references to piracy in Sabah in her husband's papers[26] and concludes, "Both [Singapore and Sabah were] virtually uninhabited, in areas for many years unsafe ——."[27] before British occupation.

The Pryers were not the only ones to record the plight of Sabah; their superior, Treacher, the first governor to reside in Sabah, testifies to "—— The Balignini, Illanun, and Dyak pirates infesting the Borneo and Celebes coasts."[28] Saleeby, the pre-eminent chronicler of Sulu, writes, "North Borneo, the Sulu Archipelago, and the southern coasts of Mindanao were the centres from which came these fierce sea wolves ——".[29] and, "The Bisayan and the Calamian Islands, Palawan, and eastern Borneo were their [the pirates] hunting grounds"[30] in the interregnum between the East India Company and the British North Borneo Company.

The impact of the preceding descriptions can only be to conclude that the British North Borneo Company moved into, and thereby acquired sovereignty over a no-man's-land, and that its treaties with Brunei and Sulu were merely to forstall trouble from historical claimants to the area[31] and, primarily, from Spain. Before proceeding to a discussion of these treaties, it is worth dispatching one small point.

According to Pacifico Ortiz, "The descendants of the Sulu warriors who came to the aid of the Sultan of Brunei in 1704 remained there [in Sabah]",[32] but he makes no effort to substantiate this remark, and it cannot be taken seriously that there were permanently settled Sulus holding down Sabah for the sultan. Although there were 5,503 Sulus in Sabah in 1911,[33] most of them were recent immigrants or descendants of them.[34]

Things had become so chaotic in northeast Borneo by 1865 that the American adventurer/consul[35] C.L. Moses leased, for 10 years, the area from Kimanis Bay to the Paitan River not from Sulu but from Brunei. Through W.C. Cowrie, who was gun-running to Sulu, Moses' company, the American Trading Company, became aware of Sulu's claim.[36] When the company's settlement failed at Kimanis Bay, it interested the Austrian consul in Hong Kong, von Overbeck — the key figure in this dispute from the Philippines' point of view — in Sabah.

In 1877, von Overbeck, on behalf of himself and Alfred Dent, obtained the area from Kimanis Bay to the Sibuco River with the exception of the river enclaves of some local *datus* by three treaties with the Sultan of Brunei and one with a subordinate of his. At the beginning of 1878 he concluded a similar treaty with the Sultan of Sulu for the overlapping region from the Pandassan River to the Sibuco River. Subsequently, Dent and von Overbeck's rights in Sabah were transferred to the former's British North Borneo Company.

The key to the Philippine claim has hinged on the translation from Malay to English, in the Sulu treaty, of *padjak* = *pajak*[37] whose modern use is "1. tax, 2. monopoly.",[38] but which is used in West Malaysia to describe a form of land rent.[39] Since the Philippine translation of the treaty interprets *padjak* as lease while the British interprets it as cession, it is necessary to investigate additional material. However, it must be remembered that even the Philippine interpretation charaterizes the treaty as a perpetual contract which von Overbeck and Dent might transfer without Sulu's permission.

At the same time that the cession/lease treaty was signed, another one, whose translation has not been disputed, was signed by the Sultan of Sulu investing von Overbeck as *Datu Bandahara* and *Rajah* of Sandakan. This treaty reads, "—— We the Sultan —— of Sulu and its dependencies have nominated and appointed, and do hereby nominate and appoint Baron de Overbeck *supreme* and *independent* ruler of the above named territories with the title of datu bandahara and Rajah of Sandakan with absolute power over life and death of the inhabitants of the country with all the absolute rights of property over the soil of the country — and the right to dispose of the same as well as the rights over the productions of the country — with the rights of making laws, coining money, creating an army and navy and levying customs dues — and other dues and taxes — together with all other powers and rights usually exercised by and belonging to *sovereign* rulers and which we hereby *delegate* to him of our own free and sovereign will."[40] The words "supreme", independent", and "sovereign" in this treaty would unequivocally signify a cession were it not for the verb "delegate" which may be defined either as "to entrust to another" or as "to assign",[41] and of course Philippine supporters have chosen the former.[42] The ambiguity of these two treaties is typical of the rest of the material on the transaction. For instance, in 1880, Julian Pauncefote, an official of the British Foreign Office, wrote both, "—— The *cessions* of territory in North Borneo made to him by the Sultans of Sulu and Brunei",[43] and, "—— Exercise civil and criminal juriadiction *in the name of the Sultans* of Sultans [sic] of Sulu and Brunei, *under whose suzereignty* they hold the territory."[44] Equally contradictory is a letter of the British Foreign Secretary from 1880 to 1885, Lord Granville, to Morier, his government's representative in Spain, which says, "—— Rights to the territories of North Borneo under *cessions* made to him by the Sultans of Brunei and Sulu, ——", "—— Under the *cessions* from the two Sultans ——", "—— The *cessions* of Mr. Dent ——", and yet, "—— The grants of territory and the powers of government made and delegated by *the Sultans in whom the sovereignty remains vested.*"[45]

Damaging to the Malaysian right to Sabah is a letter written by the company's resident in Papar, A.M. Everett, which states, "—— I am officially responsible for the action I have taken in the expulsion of Datu Amir Babar *only* to His Highness the Sultan [of Brunei]; ——."[46] Even more so, is a letter from Dent to Granville's predecessor, the Marquis of Salisbury, which asserts, "—— If your Lordship would not feel justified in at least stating that Her Majesty's Government do recognize our right to *lease* the territories specified in the title deeds granted by the Sultans ——."[47]

From the preceeding material a good case can be made for either cession or lease being in the treaty, but, whatever the design at the time of the signing, the treaty came to be regarded as a cession. In 1903, the Sultan of Sulu confirmed the "cession" by the treaty reproduced in APPENDIX G, when he agreed, "—— That the islands were included in the *cession* of the districts and islands mentioned in the above-stated Agreement."[48] In 1903, Maj. Gen. Davis, the US commander in the Philippines reported, "—— Annual payments of $5.000 from the Government of North Borneo, which is given in compensation for a *cession* of certain royal prerogatives respecting lands and people in Borneo, that were recognized as belonging to an ancestor, *sold* then for the yearly payment stated."[49] In 1908, Saleeby professed, "In January, 1878, Sultan Jamalul A'lam *ceded* the Sultan possessions in Borneo to the Sabah or British North Borneo Company."[50] Finally, and of more consequence, in 1930 the US, of which the Republic of the Philippines is the successor in the Philippines, accepted, in delimiting the Sabah–Philippine border, that British North Borneo was a protectorate of Britain.[51] By recognizing that Britain was the protector of Sabah, the US was also acknowledging that Britain's treaty with the British North Borneo Company which established the protectorate, was valid, and consequently that the company was sovereign in Sabah (or else the company could not have made the treaty with Britain). This acknowledgment of the company's sovereignty in Sabah is so, despite the opinions to the contrary of two *individual* Americans who served as governors in the Philippines.[52]

It can be concluded, therefore, that in 1878 the British North Borneo Company occupied a no-man's-land in northeast Borneo, before which it had protected itself by signing treaties with the Sultans of Brunei and Sulu that were meant to forestall trouble with the sultans and especially Spain. That, in retrospect, the meaning of these treaties is vague, does not obscure the fact that for over 70 years these treaties were accepted by world governments as cessions. It only remains in Part I to rebut several legalistic arguments proposed by Philippine commentators on behalf of the Philippines.

Ortiz and Arturo Alafriz assert that the contract between Sulu and the British North Borneo Company must be a lease first, because it requires the company to make yearly payments, and second, because cessions can only occur between sovereigns[53] for which Ortiz has several references from international law texts. A precedent both for annual payments in exchange for a cession and for a cession to an individual lies in neighbouring Sarawak, where the Brookes made annual payments to Brunei and certainly were not sovereigns before the cessions.[54] Somewhat similar is the treaty of 1824 in which the Sultan of Johore and one of his *datus* ceded Singapore to the East India Company partially in return for *monthly* payments for the rest of their lives.[55]

Ortiz has also interpreted the clause, "—— The rights and powers hereby leased *shall not be transferred* to anothr nation, or a company of other nationality, without the consent of Their Majesties Government [i.e. the British government]",[56] to mean that the Sultan of Sulu could have the right to transfer Sabah again in the future, and therefore remained sovereign. Although in this clause, the treaty does not say by whom Sabah "shall not be transferred", the same sentences, as well as the first paragraph, allows von Overheck and Dent to assign their rights to others. This argument of Ortiz's depends on a preverse reading of the treaty.

Ortiz and Alafriz have questioned the validity of the Sulu treaties on two grounds. First, the sultan signed without any of his *datus* cosigning, whereas, according to Beyer,[57] all Sulu treaties required the signature of some important *datus* besides the sultan.[58] Unfortunately for them, there seems to be no unanimity on the subject of the required signatures because Majul has found, "*Most* [but therefore not all] of the important treaties between the Spaniards and the Sulus, principally those of 1737, 1851, and 1878, contain the signatures of some members of the Ruma Bichara ——. However, the affixing of the signatures of the *datus* on the documents might merely suggest that the Spanish authorities insisted on them. As far as a sultan was concerned, *consulting the datus need not imply that they should sign with him*.[59]

Ortiz and Alafriz[60] also investigate whether the treaty is invalid because Spain, by its treaty of 1851 with Sulu, had acquired sovereignty over Sulu before the treaty with von Overbeck and Dent.[61] To reinforce this proposition it can be noted that, when Spain so requested, Sulu executed three fugitives from Spanish justice in 1867.[62] However, they conclude, "—— Spain's control over most of Sulu and its dependencies was merely nominal. Spain could raid and punish, but ——"[63] it did not control Sulu as is witnessed by the continuing military operations against the sultan.[64] In addition, Germany and Britain did not recognize Spanish sovereignty in the Sulu archipelago until 1885. It should be mentioned that Philippine partisans have alleged that this treaty, accepting Spanish sovereignty in the Sulu archipelago, recognizes Sulu's sovereignty over Sabah in the portion which states, "—— The territories of the continent of Borneo, which belong, or which have belonged in the past to the Sultan of Sulu ——".[65] However, since "belong" is coupled with "have belonged" the intention is once again ambiguous.

Two additional facts can be observed in passing. First, Spain obtained a letter from the Sultan of Sulu in 1878 which nullified his contract with von Overbeck and Dent, but this has generally been regarded as having been signed under duress and therefore as having no validity.[66] Second, the rallying of indigenous support to the company's residents during belligerent visits of Spanish warships to Sabah in the late 1870's and early 1880's,[67] has been interpreted as a crude referendum in favour of the company.[68]

The stance that Ortiz finally takes is as follows: in 1878 Sulu was independent and sovereign despite treaties to the contrary with Spain, because Spain had been unable to assert control over Sulu as witnessed by the continuing military operations against Sulu, and by the refusals of Germany and Britain to accept Spanish sovereignty there (Ortiz overlooks that by the same standard, Sulu had not established control over Sabah); in 1878 Sulu leased North Borneo to von Overbeck and Dent (the 1903 confirmation of the "cession" withstanding); although the Sultan of Sulu subsequently became a subject of the Philippine government, according to Harrison and Carpenter (see FOOTNOTE 52), he remained completely sovereign in Sabah and nothing which either Spain or the US did prejudiced this (Ortiz ignores that the US recognized the Sabah protectorate in 1930 and thereby the sovereignty of the British North Borneo Company); and in 1962, "To give *semblance* of legality to the transfer of sovereignty from the said heirs, to the Republic, of the several surviving heirs of Sultan Jamalul Kiram who died in 1936, Esmail Kiram was proclaimed the new Sultan of Sulu ——"[69] from whom a cession was obtained by the Philippines (that is, to try to strengthen its pretensions the Philippines resurrected a position which had not been filled in 26 years). To accept this tenuous argument, culminating in 1962 with the cession of Sabah to the Philippines by a long dormant sultan, requires 1) pretending that Sulu (re-)established government in North Borneo after the East India Company withdrew, 2) accepting the indications that the transaction in 1878 was a lease, and 3) denying the relevance of the 1930 treaty between the US and Britain.

To recapitulate the position of this paper once again: after the East India Company abandoned its stake, northeast Borneo and the surrounding region became a lawless vacuum which was finally supplanted by the British North Borneo Company which secured its peaceful occupation by advance treaties with the neighbouring sultans. With the exception of Harrison and Carpenter, no one denied that the company was sovereign in Sabah until after the second world war.

Before proceeding to Part II, it seems appropriate to state that Article I of the Philippine constitution defines the territory of the Philippines without including Sabah. While the purpose of the article is to indicate what is included in the Philippines, it can not be denied that the article can also be used to show what is excluded, namely Sabah.

Part II

Not only has the Philippine claimed Sabah on the basis of the Sultan of Sulu's treaties with von Overbeck and Dent but also on the grounds that Malaysian control of Sabah represents a threat to the security of the Philippines.[70] Malaysia's possession of Sabah is not a threat in the sense that Malaysia is or has been belligerent towards the Philippines, but rather, that its control is an indirect threat. It is alleged that Chinese subversives in Malaya could travel to Sabah and from thence to the Philippines,[71] or that the Chinese communists might take over Malaysia,[72] or that racial disorders in Malaysia would involve the Chinese People's Republic in Malaysia.[73] While all these situations are possibilities, it is impossible to see how the Philippines' security would be improved by acquiring Sabah, which would give the Philippines a long jungle border not only with Malaysia but also with Indonesia. In fact, if security is a criteria for determining the possession of Sabah, a convincing case can be made for Malaysia since Sabah's Chinese inhabitants, who compose 23% of the total population,[74] would scarcely stand for the Philippines' discriminatory commercial laws.[75]

In conclusion, the Philippines' concern for the region's security is as damaging to its claim as to Malaysia's. As elaborated in Part I, Malaysia also has a secure historical case for retaining Sabah, while the Philippines' position is by no means air tight.

Editorial Note

The original M.S. has a series of Appendicies. These raise some editorial and printing difficulties. Unfortunately Mr. Brock Short was abroad on fieldwork and could not be contacted at this time. We therefore propose to hold over the Appendicies for the present.

Only his text notes are now printed here — on the following plates ......

Notes.

(1) His record is given in Republic of the Philippines, *Philippine Claim to North* Borneo (Manila, 1963), p. 5. Hereafter the book is referred to as *Philippine Claim* ——.

(2) The following are the dates of some, but by no means all of the *Free Press* articles on the Sabah "question": Dec. 30, 1961: Jan. 6, 20, 27; Feb. 3, 10 (2articles), 24; Mar. 3, 10, 17, 31; Apr. 7, 21, 1962; Feb. 23 (2 articles); Mar. 3; Oct. 19, 1963.

(3) See for instance *Philippine Claim* —— p. 22: "—— In 1704, the Sultan of Sulu, by virtue of a cession from the Sultan of Brunei, became the sovereign ruler of North Borneo"; Martin Meadows, "The Philippine Claim to Borneo", *Political Science Quarterly*, LXXVII–3, Sept. 1962, p. 323: "What is now North Borneo was part of the Sultanate of Brunei, until 1704, but in that year the Sultan of Brunei, in return for assistance in quelling an insurrection, ceded North Borneo to the latter"; P.A. Ortiz, "Legal Aspects of the North Borneo Question", *Philippine Studies*, XI–1, Jan. 1963, p. 22: "Before 1878, North Borneo was admittedly in the sovereign possession of the Sultan of Sulu ——."

(4) See the following statements by Leigh R. Wright, "Historical Notes on the North Borneo Dispute", *Journal of Asian Studies*, XXV–3, May 1966, p. 471: "—— It is not at all certain that the Sulu Sultans held sovereignty over any part of North Borneo."; p. 479: "Whether Sulu ever held sovereignty over North Borneo is open to dispute."; p. 479: "It is only the weight of Sulu tradition which sustains the Sulu claim to ownership of the area."; p. 480: "—— Sulu's case remains unsubstantiated."

(5) Hugh Low, Selesilah (Book of the Descent) of the Rajahs of Brunei", and accompanying commentary, *Journal of the Straits Branch of the Royal Asiatic Society*, V, June 1880, p. 17.

W.H. Treacher, "British Borneo", *Journal of the Straits Branch of the Royal Asiatic Society*, XX, 1889, p. 19: "The Spanish claim to North Borneo was a purely theoretical one, and not only their claim, but that also of the Sulus through whom they claimed, was vigorously disputed by the Sultans of Brunei, who denied that, as asserted by the Sulus, any portion of Borneo had been ceded ——."

J.R. Hughes-Hallett, "Sketch of the History of Brunei", *Journal of the Malay Branch of the Royal Asiatic Society*, XIII, August 1940, p. 33.

(6) Low, *op. cit.* p. 17.

(7) *Ibid.* first footnote p. 17.

(8) Hughes-Hallett, *op. cit.* p. 33.

(9) Tom Harrisson, "The Unpublished Rennel Manuscript: A Borneo Philippine Journal, 1762-63", *Journal of the Malaysian Branch of the Royal Asiatic Society*, XXXIX–1, 1966, p. 105: quoted directly from the manuscript — "The Dominions of Sooloo are composed of about 140 or 150 islands situated between the Philippines and Borneo: together with a large part of the Coast of Borneo; the Island of Paragua or Palawan, & the Islands that form the Straight of Balabar."

(10) H. de la Costa, S.J., "*Muhammad Alimuddin I, Sultan of Sulu, 1735–1773*", a paper presented to the International Conference on Asian History, the University of Hong Kong, Aug. 30—Sept. 5, 1964, p. 2. Italics added.

(11) The following is mainly based on DE LA COSTA, *op. cit.*

(12) The full treaty can be found in Appendix A of DE LA COSTA, *op. cit.*

(13) *Ibid.* Appendix B.

(14) The full treaty is in APPENDIX A of this paper.

(15) Dalrymple's opinion has been corroborated by C.A. MAJUL, "*Political and Historical Notes on the Old Sulu Sultanate*", International Conference on Asian History, —— 1964, p. 7: "The Spanish for some time were considering Alim-ud-din as a Sultan when he had before the eyes of the Sulus ceased to be one. When he returned a free man to Sulu in 1764, he was again, considered Sultan, ——."

(16) See APPENDIX B of this paper.

(17) WRIGHT, *op. cit.* p. 473, & p. 482. Concerning Brooke only NAJEEB SALEEBY, *The History of Sulu*, (Manila, 1963 reprint of 1908 edition), pp. 99–100.

(18) *Ibid.* p. 474, & p. 482. The reason why is unknown to me, but Wright's reference is the British Foreign Office, Sulu series 71/15; Feb. 3, 1879.

(19) For accounts of these expeditions see SALEEBY, *op. cit.* pp. 84–117, or or First Lieutenant W.E.W. McKinley for Maj. Gen. G.W. Davis, "A Brief Summary of Historical Accounts Respecting the Spanish Military Operations Against the Moros ——", Appendix VI of Davis' *Annual Report of Maj. Gen. George W. Davis 1902–03*, (Manila, 1903), pp. 138–165.

(20 For this aspect of the Sulu social structure see MAJUL, *op. cit.* p. 11.

(21) "—— The war with the Spaniards which they [the Sulus] ceaselessly wage is a continual drain, irrespective of the numerous village feuds which are always in progress." Mrs. W.B. (Ada) Pryer, *A Decade in Borneo*, (London, 1894), p. 113.

(22) *Ibid.* p. 6

(23) *Ibid.* p. 9.

(24) *Ibid.* P 10.

(25) *Ibid.* p 113

(26) K.G. TREGONNING, "William Pryer. The Founder of Sandakan", *Journal of the Malay Branch of the Royal Asiatic Society*, XXVII-1, May 1954, pp. 36, 38, 42, & 48.

(27) *Ibid.* pp. 49–50.

(28) TREACHER, *op. cit.* p. 17.

(29) SALEEBY, *op. cit.* p. 84.

(30) *Ibid.* p. 121. Italics added.

(31) The small amounts given to the rulers in testimony to this. The Sultan of Sulu settled for Malay $5,000, the Sultan of Brunei for M$12,000, and one of the latter's datus for M$3,000, all three to be paid annually in perpetuity. In 1824 for Singapore only, the Sultan of Johore and one of his *datus* were paid Spanish $40,000 outright and Sp. $2,00 *per month*

during their lives. (See Sir W.G. Maxwell and W.S. Gibson (eds.), *Treaties and Engagements Affecting the Malay States and Borneo*, (London, 1924), p. 123. If one considers the interest rate to be 5%, the values of these perpetual streams paid for North Borneo (solved by using the solution for an infinite geometric progression) in 1878 are M$100,000, M$240,000, and M$600,000 respectively. Alternatively, if the rate of interest is 10%, the amounts are halved. The British North Borneo Company probably considered some rate between 5% and 10% as applicable, and so by investing between M$200,000 and M$400,000 (the sums for the two interest rates) the company could have provided for the annual payments in perpetuity. If the exchange rate was US$1 = M$12.5, as A.A. Alafriz ("On the North Borneo Question", *Philippine International Law Journal*, II-1 & 2, January and June 1963, p. 81) cites, then the company need only have invested between US$16,000 and US$32,000.

(32) Ortiz, *op. cit.* p. 51.

(33) Sabah, *Annual Bulletin of Statistics, Sabah, 1966*, (Kuala Lumpur, 1966?), p. 10.

(34) Mrs. Pryer, *op. cit*, p. 113: implies that, even before the British North Borneo Company arrived, the Sulu vendetta with Spain and the local feuds were causing some emigration from Sulu to Sabah and she states that this migration from inland Sulu (the coastal people were more aggressiv[illegible]d therefore less suitable settlers) was encouraged by her husband [illegible]d other planters' need for workers.

(35) There is some question as to whether, as consul, Moses was an imposter — Meadows, *op. cit*, p. 324: asserts *that* he was a fraud: however Wright, *op. cit.* p. 475: accepts that he was a bonafide consul. Concerning this point, Tregonning, *op. cit*, p. 26: notes that a US warship was sent to Brunei when Moses' "consulate" was burned.

(36) Meadows, *op. cit.* p. 324.

(37) The spelling depends on whether one uses Dutch orthography *(padjak)* or English *(pajak)*.

(38) J.M. Echols and H. Shadily, *An Indonesian English Dictionary*, (Ithaca, 1965), p. 263.

(39) B.C. Maday, *et al.*, *Area Handbook for Malaysia and Singapore*, (Washington, 1965), p. 463.

(40) See Appendix D. Italics are added. Brunei signed a similar document which is available in Appendix L.

(41) These are definitions 1 and 3 of *Webster's Third New International Dictionary*, (Springfield, Mass., 1966), p. 596.

(42) Ortiz, *op. cit.* p. 24, and *Philippine Claim* ---, p. 62.

(43) British Foreign Office, General Correspondents, series 12/55 thereafter referred to as BFO), Julian Pauncefote, April 12, 1880. Italics added.

(44) BFO, Julian Pauncefote to Granville and Law Officers of the Crown, July 30, 1880. Italics added.

(45) See italicized portions of Appendix E. Italics added above.

(46) BFO, A.M. Everett May 7, 1880. Italics added.

(47) BFO, Alfred Dent, April 12, 1880. Italics added.

(48) See APPENDIX G. Italics added above.

(49) MAJ. GEN. DAVIS, *op. cit.* p. 46.

(50) SALEEBY, *op. cit.* p. 122. Italics added.

(51) Department of State, *Foreign Relations of the United States, 1930*, Vol. III, (Washington, 1945), p. 147: "Being desirous of delimiting definitely the boundary between the Philippine Archipelago (the territory acquired by the United States of America by virtue of the Treaties of December 10, 1898, and November 7, 1900, with Her Majesty the Queen Regent of Spain) and the State of North Borneo which is under British protection, ——."

(52) F.B. HARRISON, a governor-general of the Philippines: "The [Carpenter] agreement 'did not interfere with the [Sulu] Sultan's status of sovereignty over British North Borneo lands'" *Philippine Claim* ——, p. 116. No primary source given.

Governor Carpenter, a contemporary of Harrison, in a letter to the Director of Non-Christian Tribes, May 4, 1920: "The termination of the temporal sovereignty of the Sultanate of Sulu within American territory is understood to be wholly without prejudice to the temporal sovereignty and ecclesiastical authority of the Sultanate beyond the territorial jurisdiction of the United States Government especially with reference to that portion of the Island of Borneo which as a dependency of the Sultanate of Sulu is understood to be held under lease by the chartered company which is known as the 'British North Borneo Company'" *Philippine Claim* ——, p. 126.

Harrison is unique in another respect — he believes that the contract was made in *Mexican* dollars! F.B. Harrison, "Letter of Francis B. Harrison to Vice President and Secretary of Foreign Affairs Elpidio Quirino", reprinted in *Philippine International Law Journal*, II-1 & 2, January–June 1963, p .336.

(53) ORTIZ, *op cit.* p. 44, & p. 46. ALAFRIZ, *op. cit.* p. 89, & p. 92.

(54) Nor does Ortiz deny that Sarawak was ceded to the Brookes, to wit, "The cession about the year 1846 to 1853 by the Sultan of Brunei to James Brooke ——," ORTIZ, *op cit.* p. 48.

(55) I am indebted to Prof. D.G.E. Hall for pointing this out to me. A copy of the treaty appears in MAXWELL AND GIBSON, *op. cit.* pp. 122–126.

(56) This is from the Philippine version of the Sulu transaction Italics added This clause was probably inserted by the sultan in order to have a British neighbour to play off against Spain.

(57) H. OTLEY BEYER, "Brief Memorandum on the Government of the Sultanate of Sulu and Powers of the Sultan during the 19th Century", reprinted in *Philippine International Law Journal*, II-1 & 2, January–June 1963, pp. 324–333, especially pp. 331-333.

(58) ORTIZ, *op. cit.* p. 25. ALAFRIZ, *op cit.* p. 94.

(59) MAJUL, *op. cit.* p. 6. Italics added.

(60) ORTIZ, *op. cit.* p. 47. ALAFRIZ, *op. cit.* p. 96 ff.

(61) SALEEBY, *op. cit.* p. 107 "'—— They [the Sultan and *datus*] desire and request that the island of Jolo and all its dependencies be incorporated with the Crown of Spain.——.

Annex 5

LAPIAN, A.B. AND NAGATSU, K., "RESEARCH ON BAJAU COMMUNITIES: MARITIME PEOPLE IN SOUTHEAST ASIA", REPRINTED FROM *ASIAN RESEARCH TRENDS: A HUMANITIES AND SOCIAL SCIENCE REVIEW*, NO. 6, 1996

Research on Bajau Communities: Maritime People in Southeast Asia

Adrian B. Lapian and Nagatsu Kazufumi

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The Toyo Bunko, Tokyo

Research on Bajau Communities: Maritime People in Southeast Asia

Adrian B. Lapian and Nagatsu Kazufumi

The literature on sea nomads in Southeast Asia, including those on Bajau communities, has been collected by David E. Sopher and published in his book *The Sea Nomads: A Study Based on the Literature of the Maritime Boat People of Southeast Asia* [Sopher 1965]. The book was reprinted in 1977 with an updated bibliography. Both bibliographies listed works in Western languages only. Since then studies about the Bajau have been flourishing. At the 1993 Indonesian Institute of Sciences (LIPI)–sponsored International Seminar on Bajau communities, participants from Australia, France, Germany, Indonesia, Japan, Malaysia, the Netherlands, the Philippines, and the United States presented their research findings. However, scholars in Norway, Finland, Singapore, and the United Kingdom are also engaged in the study of the boat people communities of Southeast Asia.

Historical Background

Who are the Bajau people?

People living in boats have been reported all over East and Southeast Asia: from Kyushu and Okinawa in Japan, Hong Kong, and South China, to insular Southeast Asia, and the islands off the western coast of the Malay Peninsula [Habara 1963, Sopher 1965, E. Anderson 1972, Noguchi 1987]. We should add here another maritime group, the Vezo of southwestern Madagascar, who have been studied by several scholars, including Koechlin [1975, 1984], Astuti [1995], Ralijaona [1993], Rejela [1993], and others.

Sopher divided these maritime boat people of Southeast Asia into four geographically distinct groups:

- The west coast of the Malay Peninsula where the Mawken of the Mergui Archipelago are well known;
- The South China Sea, particularly the Riau and Lingga Archipelagos where boat-dwellers are generally called "Orang Laut" (sea people), although each small independent group identifies itself with a locality (a small island, creek, estuary, etc.);
- Sabah (East Malaysia) and along the eastern coast of Kalimantan, and the Sulu Archipelago in the southern part of the Philippines;
- Eastern Indonesia, i.e., the present-day provinces of North, Central, South, and Southeast Sulawesi, Maluku, and West as well as East Nusatenggara.

In the two latter areas they are usually called Bajau or Bajo (in the literature sometimes written as Badjaw, or spelled according to the Dutch system; viz., Badjao and Badjo, etc.) [Maps 1, 2]. Sather [1995], therefore, categorizes these two into one single group, which is more appropriate. Bajau groups in general are also designated according to their place of residence. For example, the Bajo Nain live in and around the island of Nain in North Sulawesi.

The Bajau, however, refer to themselves as Sama, or Orang Sama (the Sama people), sometimes with local variants such as Samah in Sabah, or Samma as on the island of Pulo Laut off the coast of South Kalimantan [Abdul Djebar Hapip et al. 1979, 7]. In eastern Indonesia the term Bajo is commonly used but they regard themselves as Sama [Zacot 1978b, Matsuzawa 1993]. Nagatsu's fieldwork in eastern Kalimantan (Maratua and Balikpapan) and Sulawesi (Manado, Torosiaje, Tolitoli, and Buton) has also confirmed that they identify themselves as Sama, although they also refer themselves as Bajo or Bajau. This is true for the land-dwellers as well as those living in houses on the strand.*

In Sabah the term Bajau was adopted by the British North Borneo Chartered Company to refer to all Sama speakers [J. Warren 1971, xiv]. This usage is also continued by the present state of Sabah, Eastern Malaysia as reflected in statistical data. In Sabah these Sama speakers are usually divided into two groups: the land-oriented people living along the western coast and the rather sea-oriented people along the eastern coast [Evans 1952, Sather 1978, Banker 1984, J. Walton and Moody 1984]. According to Evans [1952] and Sather [1978], the Sama speakers call themselves Sama(h), while the term Bajau was originally used by Brunei Malays in referring to them. However, the term Bajau appears to be very popular among Sama speakers themselves, both the land-oriented as well as the sea-oriented.

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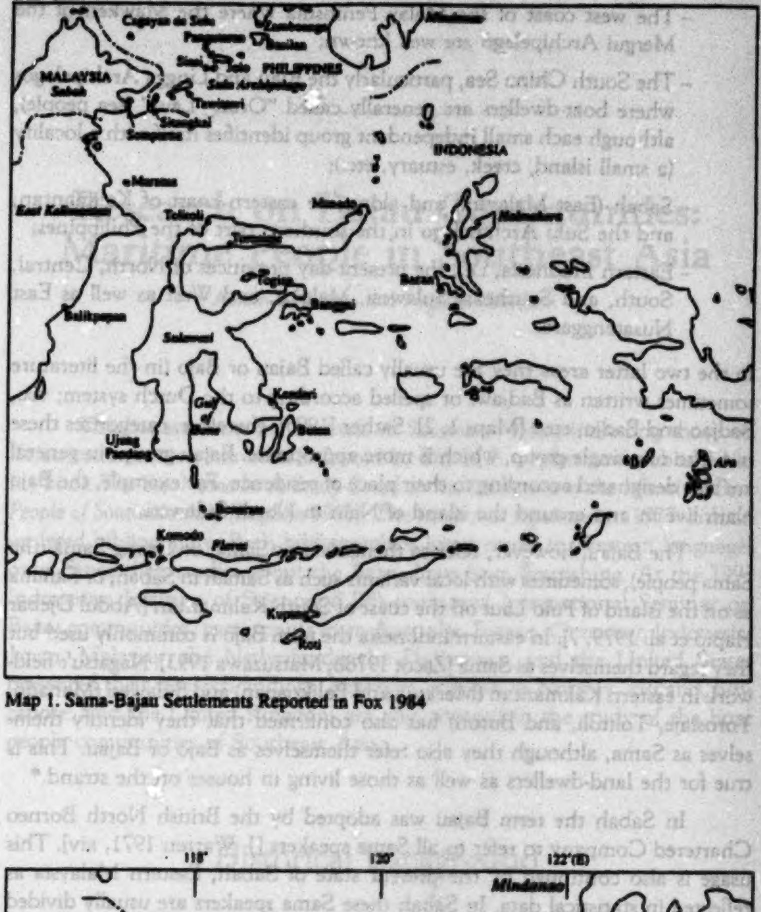
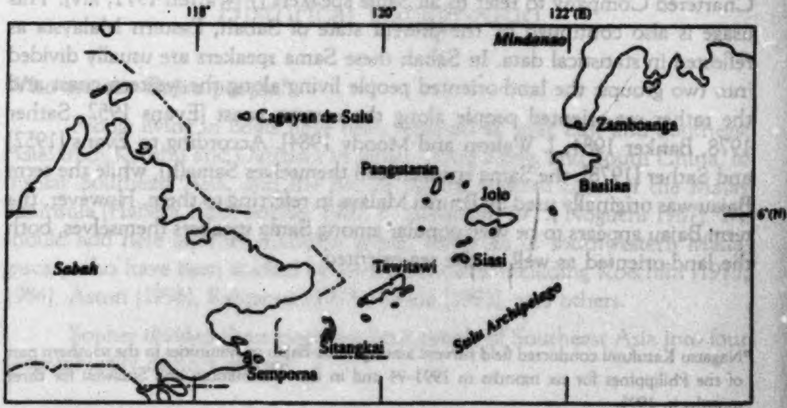
*Nagatsu Kazufumi conducted field surveys among Sama-Bajau communities in the southern part of the Philippines for six months in 1993–94 and in East Kalimantan and Sulawesi for three months in 1995.


Cagayan de Sulu
Zamboanga
Mindanao
Pangutaran
Basilan
Siasi
Jolo
PHILIPPINES
MALAYSIA
Sabah
Sulu Archipelago
Tawitawi
Sitangkai
Semporna
INDONESIA
Maratua
East Kalimantan
Manado
Tolitoli
Halmahera
Tomini
Togian
Bacan
Banggai
Balikpapan
Sulawesi
Kendari
Gulf of Bone
Buton
Ujung Pandang
Aru
Bonerate
Komodo
Flores
Kupang
Roti

Map 1. Sama-Bajau Settlements Reported in Fox 1984


118°
120°
122°(E)
Mindanao
Cagayan de Sulu
Zamboanga
Pangutaran
Basilan
Jolo
6°(N)
Sabah
Siasi
Tawitawi
Sulu Archipelago
Sitangkai
Semporna

Map 2. Sulu and Sabah

The terminology in the Sulu Archipelago is a little bit confusing. Here (also in Semporna in eastern Sabah) Sama speakers are distinguished as Samal and Bajau. In the literature the term Samal is used to refer to the land-dwelling Sama speakers, while the term Bajau is applied to past or present boat-dwelling groups [Stone 1962; Nimmo 1965b, 1968b, 1972a, 1986; C. Warren 1983]. This division, however, is misleading, because here, unlike in eastern Indonesia and Sabah, the boat-dwelling Sama speakers do not regard themselves as Bajau, and other Sama speakers and neighbouring people do not refer to them commonly as Bajau either [Nimmo 1968a]. The term Samal is also not used by the land-dwelling Sama speakers to refer to themselves, but is used by the Tausug in a discriminative connotation, Samal meaning "dirty" in Tausug [Kurais II 1975, 1979]. Excepting the Jama Mapun in Cagayan de Sulu and the Yakan in Basilan, who are also Sama speakers but do not call themselves Sama, other Sama-speaking boat- or strand-dwelling people refer to themselves as Sama, usually identifying with the name of their place or habitat when necessary, such as Sama Sitangkai or Sama *dilaut*—the maritime Sama [Pallesen 1972, Kurais II 1979, Geoghegan 1984, Monden 1986, Nimmo 1990a].

In sum, Sama speakers in general identify themselves as Sama everywhere. The term Bajau or Bajo is also commonly used by them in Sabah and eastern Indonesia. On the contrary, the term Bajau is seldom used locally in Sulu. But most scholars have adopted the term Bajau to designate Sama speakers. Confusing is the fact that while the term Bajau covers all Sama speakers in Indonesia and Sabah, in the Sulu Archipelago it is limited only to boat-dwellers past and present.

Origins

Local legends refer to a former affiliation of the Bajau with the old sultanates of Melaka, Johor, Brunei, Sulu, Luwu, or Bone [Sather 1993a]. The persistent and widespread reference in Bajau tales to Melaka or Johor as the centre of dispersal has led Sopher [1965] to the hypothesis that the sea nomads must have originated from the western part of the Archipelago. However, Nimmo [1968a, b] regarded this as recently added lore that well appealed to the Bajau imagination. The boat-dwelling habit could be acquired by any sea nomadic group independently as a practical adaptation to ecological conditions.

According to Kemp Pallesen's historical linguistic studies [1985], the Proto-Sama-Bajau language was established around A.D. 800 in the area around Zamboanga and Basilan. Contacts between the Sama-Bajau and Tausug who migrated from northeastern Mindanao occurred some 700 years ago, and the principal movement was toward the southwest, through the Sulu Archipelago to the eastern coast of Borneo. Other migrations went southward to the Straits of Makassar, and from there the Bajau dispersed eastward to Maluku and the Nusatenggara islands [Sather 1993a, b].

Other historical studies were done by Muhammad Kurais II [1979], who is a Sama-Bajau himself. He published local accounts on the history of the Tawitawi region based on *salsila* or oral tradition, focusing on the role played by the Sama people in the spread of Islam around the region. Tokoro Ikuya [1992] attempted to construct the ethnic interaction in Sulu by analysing some versions of origin tales of the Bajau. Nagatsu Kazufumi [1995b] has described the transition of the Bajau's economic activities in Sulu with reference to the booming seaweed aquaculture of recent years and pointed out their flexible adaptation to outside economic developments.

The riddle of the Johor/Melaka connection, however, is yet to be solved. There are many indications that the Malay world around the Straits of Melaka was and is not unfamiliar with the term Bajau as a name of a distinct group of seafaring people. The name crops up at Malay *pantun* (traditional poetry) recitals. And in the Jambi area there is a very small Bajau community next to Orang Laut groups. The *Hikayat Hang Tuah*, a text in classical Malay from the second half of the seventeenth century, mentions two princes who were brothers named Raden Bahar and Raden Bajau (a sea prince and a Bajau prince). The narrative is pure fiction, but it clearly reveals that the name was used in a maritime context.

An early sixteenth-century Portuguese text refers to *baJuũs* [Pires 1944, fol. 165r.], a group of pirating sea-rovers in the Straits area. Cortesão, who published the *Suma Oriental* of Tomé Pires, has unfortunately identified the name with the Bugis. He was obviously unfamiliar with the Bajau. These "Bajus" belong to the Celates (Orang Selat, or Straits people), who were robbers and "brought up on the sea and [were] great rowers" [ibid., fol. 143r.]. However, in another paragraph they were mentioned as a distinct group when the "Bajus" were fighting the Celates [ibid., fol. 142v.].

Sopher has collected toponyms with the name Bajau or Bajo and plotted them in a comprehensive map of island Southeast Asia [Sopher 1965, 162]. The name is indeed found in several places of the western as well as the eastern part of the Indonesian Archipelago. Most striking is the existence of a "Labuhan Bajau" (Bajau harbour) in Simeulue, an island off the west coast of Aceh, North Sumatra, while in the eastern part two "Labuhan Bajo" can be found, viz., in Sumbawa and Central Sulawesi. There is also a Tanjung Sibajau in the Mentawai Islands (opposite West Sumatra) and a place with the name Bajau in the Anambas Islands of the South China Sea. Old maps of Singapore also show a Bajau river (in a map of 1828 called "Ayer Bajoo") and a whole district called Bajau (in a map of 1898) on the western coast of the island [Buckley 1902; see Maps 3, 4].

There are thus good reasons to suggest that in former times the Bajau occupied a much wider area than today. Their disappearance from several areas may have been caused by the same factors that many Bajau groups are facing today: that is, intrusions by the "modern" world (which must have happened to the Bajau and the Orang Laut of Singapore), making them change their life styles or forcing them to migrate to distant niches. They also could have been absorbed by neighbouring groups and lost their identity as Bajau people. Zacot [1978b] made an interesting observation when he said that the Bajau in the Gulf of Tomini (North Sulawesi) divided the peoples of the world into two main groups, the Sama and the Bagai. Once the Sama turned towards the land, they lost their identity as Sama (Bajau) and became Bagai; but the reverse is also true: a Bagai could become a Sama if he or she adopted the life style of the Bajau.

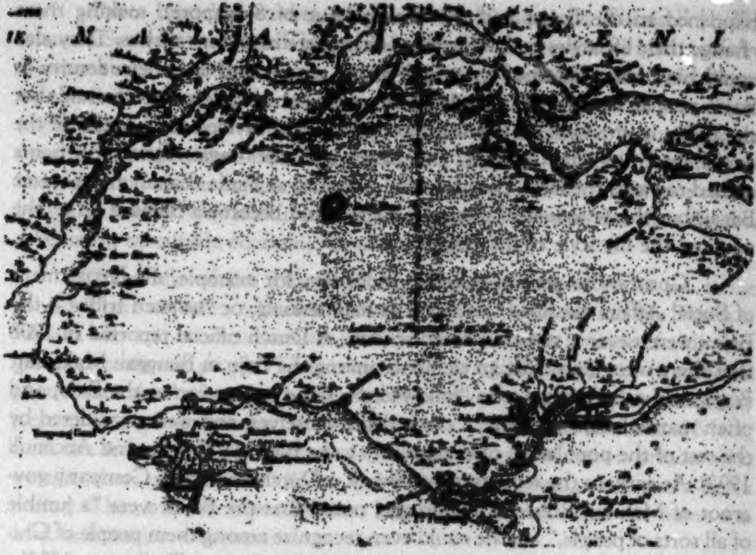
Contrary to general belief (in Indonesia, for example, the Department of Social Affairs classified the Bajau as *suku terasing*, or "isolated tribes"), the Bajau were never a static or closed society. A Dutch official reported in 1908 that there were many foreign elements among the Bajo in Banggai: Makassar, Bugis, and other people who "followed the same occupation as the Bajo, and often married Bajo women, . . . regarded themselves, and were considered by the rest of the population of Banggai . . . to be Bajo" [Velthoen and Acciaioli 1993]. As early as the seventeenth century, a Dutch East India Company governor of Maluku, Robertus Padbrugge, noted that the Bajau were "a jumble of all sorts of people," and he could even recognize among them people of Chinese, Javanese, Macassarese, Balinese, and Malay descent [Padbrugge 1682].

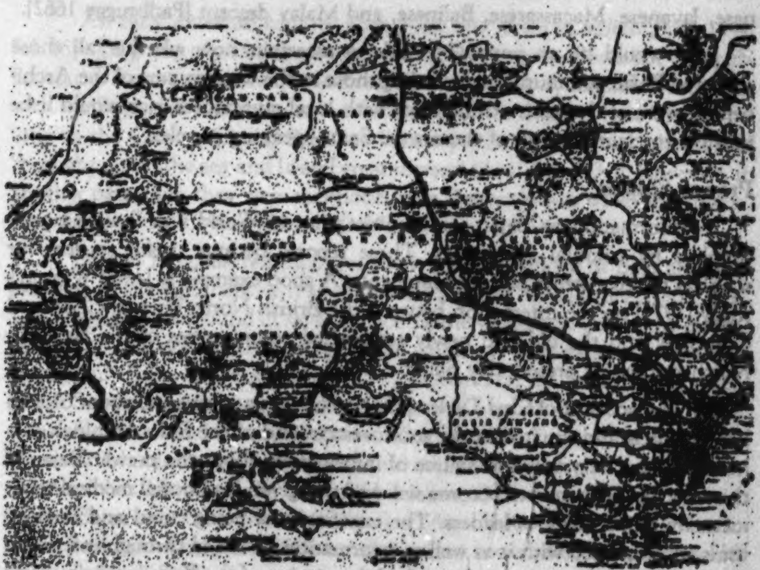
It would be an impossible task to ascertain now whether all those scattered Bajau communities, including those in the western part of the Archipelago, were of the same ethnic stock with local admixtures, nor would it be possible to claim that all of them were Sama-speaking peoples.

Prewar Studies

Information on Bajau communities prior to World War II were mostly supplied by colonial authorities. These reports became useful sources for scholars to reconstruct past developments. A good example is James Warren's study [1971] on the interaction between the British North Borneo Chartered Company and the old and newly established communities of the Bajau in North Borneo or present-day Sabah.

The account of Carl Taylor [1931], who was a journalist, about Sitangkai—a tiny island situated in the southwestern end of the Sulu Archipelago—has become a very valuable source of information about the prewar Bajau of the area. He happened to become sick and was given traditional medical treatment by Bajau religious leaders. The experience of being cured and the customs accompanied with it as well as information obtained through interviews with the Bajau themselves led to a field description of the Bajau's religious and spiritual beliefs. He also recorded burial practices and wrote about fishing activities and some of their material culture. It is interesting to note that he already referred to the distinction between the Bajau and the Samal, i.e., shore-dwelling Bajau, while recognizing that they were descendants of the same ancestors of their abandonment of a nomadic way of life. The latter group adopted





Map 3 (above): "Sketch of the Island, about 1828," from Buckley 1902. The arrow indicates "Ayer Bajoo"; Map 4 (below): "Map in 1898," from ibid. (Reproductions courtesy of the Toyo Bunko.)

because of the similarity of the two languages. He also hinted at the possibility of assimilation of the Bajau with the shore people by becoming Muslim.

An earlier report was written by Orosa [1923], a Filipino medical doctor, who was stationed in Joló and some adjacent islands for some years prior to 1923. Although the information was limited only to general data about Sulu with a few comments on the Bajau, he has presented a first-hand picture on the Sulu sultanate where the local Bajau, for better or worse, had to sustain a living. The amount of information provided by both Taylor and Orosa was enhanced on account of the many photographs published in their books.

The lengthy report on the southeastern peninsula of Sulawesi by Vosmaer [1839], a Dutch trader, is worth mentioning here. During the nineteenth century it was the only authoritative source for the colonial government. In this area the Bajo played a very central role amidst warring ethnic groups and slave-raiding pirates. The first Dutch colonial official to be appointed in the eastern part of Sulawesi, Goedhart [1908], also wrote about the situation he encountered in the area where many Bajo groups had their moorings and settlements.

Contemporary Studies

Society

Only since the 1960s anthropological long-term fieldwork on the Bajau was carried out. The pioneer was H. Arlo Nimmo who conducted a six-month field research from 1963 to 1964 among the Tawitawi Bajau, resulting in a master's thesis on the Bajau at the University of Hawaii [1965a]. Tawitawi was at that time the last place where the Bajau people were still predominantly boat-dwellers. His article [1965b] based on his thesis revealed for the first time their social organization through close surveying, thus establishing where anyone should begin when studying the Bajau. He argued that their social organization largely reflected the boat-dwelling life style, indicated by certain characteristics such as the importance of independent nuclear families, sibling alliance units, and an ambilocal residence pattern. At the end he referred to possible changes in Bajau society which he explored and analysed in his Ph.D. dissertation.

Nimmo went again to the field for eighteen months from 1965 to 1967, and based on his dissertation [1969] he published a book [1972a] which focused on social change among the Bajau using the conceptual distinction between "social organization" and "social structure" introduced by Raymond Firth. Here he compared two groups of Bajau, namely, the Tawitawi Bajau and the Sitangkai Bajau, in order to see what changes had occurred as a result of their abandonment of a nomadic way of life. The latter group adopted house-dwelling habits more widely and was more Islamized than the former. The study includes valuable statistical data which he collected on their social organization. He claimed that acculturation to land-dwelling communities alone never could explain the social changes that had taken place, and emphasized that though it was clear that new patterns of social behaviour (e.g., residential and marriage patterns or patterns of local grouping) could be found among the Sitangkai Bajau, these seemingly new and alternative patterns were preferred based on traditional values.

Clifford Sather was in the first place interested in social aspects of the Bajau. His research was focused on a Bajau community at Semporna in Sabah where he lived for a year from 1964 to 1965, which produced his doctoral dissertation [1971e]. An article [1978] on their social system was published, paying attention to some economic aspects, such as the distribution of fish catches within a household. He elaborately described a cognatic society among the Semporna Bajau, dividing its spatial phases into two, i.e., the sea and the village. At sea, the conjugal family was largely independent, at times cooperating with partners and mostly concerned with the field of production, fishing, while in the village a household was a relatively enduring unit, which included some conjugal families, in the fields of exchange and distribution. He concluded that (1) either in forming ephemeral associations at sea or in affiliating a perpetuating group, the alignments depended on collateral cognatic, especially sibling, ties rather than lineal ones, and (2) as these ties were created, an element of choice, which is a primary aspect of a cognatic social system, entered. Furthermore, in reference to choice, he concluded that though the factors determining individual choice were complex, it had little effect on the Bajau social structure, because choices were exclusively made within limits defined by the kinship system. In addition, he compared the Bajau system of kinship terminology to that of other Borneo people and pointed out some similarities among them.

After revisits to Semporna for a month in 1974 and for two months in 1979, Sather [1985] wrote on the social organization among the Bajau and how it changed, particularly with regard to fishing activities. He referred to such aspects of the Bajau fishing culture as knowledge of nature, fishing gear, and fishing methods. He showed that although Bajau fishing fleets seemed to vary depending on the method used, there existed core members composed of cognatic kin of approximately the same generation, mostly siblings or brothers-in-law, or men whose wives were sisters. In the final part he briefly outlined the changes taking place in fishing organization after the 1970s due to an economic boom in Sabah, an influx of Sama-speaking refugees from the Philippines, the motorization of boats, etc. Many of the fishing fleets were organized by fish-buyers, with crews mainly composed of young refugees. This was apparently different from the organizational pattern shown in the earlier parts of his work.

Sather [1975a, 1975b] also presented narrative tales, both in English and Bajau. The data reflected the political as well as economic ties with the Sulu sultanate. Later he dealt with the change of ethnic interactions [Sather 1984], particularly in the field of economic relations from the precolonial era to the present. He described how relations between the Bajau as client and the land Sama or Tausug local headmen as patron, fostered in the political and economic framework of the Sulu sultanate, had been dissolved after the fall of the sultanate and the coming of market economy, and how a patron-client relationship had been created among the Bajau themselves, namely, between the long-established Bajau in Sabah and Bajau refugees from the Philippines.

In his recent article [Sather 1995] he examined the development of both the non-agricultural and agricultural population before and after the spread of Austronesian speakers, using archaeological, linguistic, and ecological data as well as ethnographic material. Considering the status of contemporary rain forest hunter-gatherers as well as sea nomads, including the Bajau, he maintained that they were neither fossilized foragers nor did they devolve from agriculturists. He concluded that foragers, though existing long before the arrival of agricultural economy, had developed out of the process of symbiotic exchange with agriculturists, and that they consequently expanded and specialized into certain ecosystems—coastal shores and reefs in the case of the Bajau. Significant in this work is that the process of ecological and economic adaptation of sea nomadic foragers was compared with that of rain forest foragers.

Carol Warren [1983] presented a unique approach to Bajau social change from a Marxist anthropological point of view after conducting fieldwork among the Semporna Bajau during 1968–69 and making a revisit for two months in 1975. In order to understand Bajau social change she analysed "modes of consciousness" as closely related with "modes of production," focusing on an ideology of change and an ethnic identity movement derived from the Bajau's expressed conceptions of change. She discussed that after the capitalist mode of production promoted by the introduction of wage labour entered, the formerly closed (by other dominant ethnic groups) communal and subsistence-oriented Bajau society with precapitalist modes of consciousness, in which egalitarian relations and reciprocity were emphasized, disappeared. It was replaced with new modes of consciousness in which individualistic economic rationality was highly valued. However, she found the situation changing after 1969, as it was affected by the larger religious and political context. In short, it was the state authority's encouragement to the Bajau to be more formally attached to Islam and concurrently to be more identified with the Malay group with connotations of modernity, change, and progress.

In C. Warren's work Bajau social change was excellently examined, interposing theoretical discourse with empirical description. She mostly relied on the information given in Taylor's impressionistic account [1931], which was apparently insufficient to reconstruct the economic life of the Bajau in the past. Sather [1985] emphasized in his critical comments to Sopher [1965] that the Bajau were never in a strict sense subsistence fishermen in the past. We have to pay attention to the local context of Sulu, Sabah, or Sulawesi, which was sometimes characterized by commercialism and high mobility, within which the Bajau might have played an active role at times; otherwise we tend to regard Bajau society as an ideal and static one.

Prior to the 1960s research on social change among the Bajau was focused on two events: the decline of traditional, political, and economic framework; i.e., the Sulu sultanate, which concurrently brought about the abandonment of boat-dwelling life style. After the 1960s the focus was on two interrelated events; viz., the economic boom in Sabah and the influx of Bajau refugees into Sabah, escaping from the civil war in the Philippines. Perhaps these latter events had a greater impact to Bajau societies than the former, causing great changes among the Bajau themselves.

Religious Beliefs

Many researchers have paid attention to religious aspects in Sulu because of its syncretistic nature, reconciling Islamic and indigenous religious beliefs. In particular, Bajau religious beliefs and practices are conspicuous so that many scholars have written about this phenomenon.

Nimmo in a series of articles [1975, 1990a, b] investigated in detail the beliefs and rituals of the Tawitawi Bajau. His studies showed how supernatural beings, or spirits, especially those called *saytan* who never lived as humans, and *ummagged* who were once living people, were important in the Bajau world. Though little consensus exists on the Bajau explanations of spirits, they agree that the greater part of the human experience, illness and bad luck in particular, were caused by spirits. He also revealed that the shamans, called *jins*, who were able to communicate with spirits, played a central role as instructors in almost all Bajau rituals in curing ceremonies as well as in ceremonies connected with the life cycle, such as circumcision, marriage, or death.

Monden Osamu [1986], who spent a total of six months in 1980 and 1984 among both boat-dwellers and house-dwellers of the Sitangkai Bajau, vividly describes Bajau religious practices as well as other daily activities. He observes that for the Sitangkai Bajau, Islamic leaders—the *imam* in most cases—played a significant role in life-cycle ceremonies, such as circumcision, while *walijin*, or shamans, who can communicate with *jin* spirits, played an indispensable role in their daily life: for example, at curing ceremonies or when fortune-telling about fishing or business activities. During the *magombo* or rice harvest celebration both the *imam* and *walijin* attended. While the *imam* read the Koran, the *walijin* became possessed by *jin* spirits and predicted their long-term fortune.

Bruno Bottignolo [1995], who recently conducted fieldwork among the Tawitawi Bajau, presented an indepth analysis of Bajau religion with special reference to spirits. Among the spirits, he claims, the most important one was *Umboh*, or the first man and great ancestor, who acted as mediator between *Tuhan*, the supreme power, and man. He proposes calling their religion "Umboh." He also emphasizes the significance of the sun, around which the central *pag-umboh* ceremony revolves. The ceremony is held at "the fullness of time," when sunlight first emerges from the east and when the sun is at its peak at noon. It must be pointed out, however, that since the 1970s Bajau communities have experienced rapid and strong Islamization.

Thomas Kiefer and Clifford Sather [1970] analysed the sexual symbolism represented on grave markers both of the Bajau and Tausug, claiming that it was a reflection of a pre-Islamic model. Their explicit denial of its sexual meaning was founded on the notion of holiness and uncleanliness. Dolores Ducommun [1962] presented a brief account on some life-cycle rituals and religious beliefs of the Siasi Sama-Bajau. Miura Taro [1989], relying solely on written materials, shortly discussed the syncretistic features of Bajau religious practices.

Language

A great deal of research has been published in this field, including the analysis by Charles Walton [1986] on semantics of the Pangutaran Sama-Bajau language, a lexico-statistical survey of the Sama-Bajau language group on the east coast of Sabah by Janice Walton and David Moody [1984], and a similar study of the west coast by Elizabeth Banker [1984]. In addition, two concise dictionaries of the Sama-Bajau language have been compiled: one by Al Haj Yusof Kunting [1981] on the Tawitawi Sama-Bajau, and the other by Janice and Charles Walton [1992] on the Pangutaran Sama-Bajau. Sather has written an article on numbers and adjectives related to quantity [1965b]. He also presented brief notes on the phonology and grammar of the Bajau on the east coast of Sabah [1968a]. Akamine Jun [1995] has dealt with the "definitizer" of the Sama-Bajau in the southern Philippines.

Most significant in this field was A. Kemp Pallesen's historical linguistic work [1985]. He concluded that the Proto-Sama-Bajau language was established around A.D. 800 in the area stretching from Zamboanga to Basilan and that contacts between the Sama-Bajau and the Tausug, who migrated from northeastern Mindanao had occurred some seven hundred years ago, causing the dispersion of the Sama-Bajau population as a result of political and economic circumstances due to increasing Islamic influence and Chinese-dominated commerce in Sulu.

Material Culture

Boats of the Bajau have been the main focus of many studies. Muhammad Kurais II [1975] presented a description of several types of Sama-Bajau boats and boat-building tools with a rough historical reconstruction. Alain Martenot [1981] described in detail the structure of boats of Sitangkai with special reference to the *lepa*, or traditional Bajau boat. Nimmo [1990c] published a descriptive account of several types of boats, the process of boat-building, and navigation by the Tawitawi Bajau, accompanied by a brief discussion of the local history, which was partly traceable through an analysis of the distribution of boats in Sulu.

David E. Szanton [1963, 1973] comprehensively documented the material culture of Sulu. Included were descriptions of grave markers, boats, metal- and woodwork, dwellings, mats, and pottery produced by the Bajau, including the land-dwelling Sama-Bajau, and the Tausug. In this study he focused on the motifs of *ukil*, a distinctive art of carving in Sulu. Fortunately, these articles were accompanied by photographs and illustrations of Sama-Bajau boats and now prove to be very precious documents as some of the types they show have completely disappeared.

Among other research worth mentioning here is Monden's valuable work [1990] on the present-day pirates of southern Sulu. Eyewitness accounts of both the raiders, called *mundu*, and their Bajau victims were collected through extensive interviews. This is of course precious information in the cultural context, as well as on the recent political situation in the southern Philippines, which has a long history of piracy. Terada Takefumi [1996] has dealt with problems occurring in connection with the process of nation-building among the Bajau communities in Sitangkai and Tawitawi. He mainly discusses from the Bajau point of view reaction against national educational programmes and government efforts at sedentarizing them.

The Sama-Bajau of Eastern Indonesia

So far no in-depth ethnographic work on the Sama-Bajau of eastern Indonesia has appeared, unless François Zacot's work, which is the result of more than two years of fieldwork, has come out of the press. Some papers presented at the Jakarta seminar, however, reveal that other studies are in progress. The research discussed here has been published in the form of articles. For convenience sake the spelling Bajau will be used, although in actual fact the local name is Bajo (or as spelt in Dutch: Badjo).

Zacot [1978b] conducted research among the Bajau of Nain Island and Torosiaje in North Sulawesi. He maintained that *boang Sama*, or Bajau language, plays a crucial role for the Bajau to identify and distinguish themselves from all other groups referred to as *Bagai*, or non-Bajau, and that the notion of a shared *boang Sama* unites the Bajau in a loosely recognized social space, even though they are geographically scattered.

Herald Broch [1981] described cultural variations created through migrations of several ethnic groups for centuries in such lesser islands as Bonerate in the Flores Sea. He points out that here the situation of the Bajau was different from those reported in other areas: that is, the Bajau here were regarded by other ethnic groups as experts in fishing and sailing who were able to get rich.

Matsuzawa Yoshihiko [1993] discusses Bajau migrating patterns from a historical point of view, supported by data obtained through fieldwork among the Bajau of Wangiwangi Island, Southeast Sulawesi. He argues that as a consequence of European colonization of insular Southeast Asia, migrating activities of the Bajau became more active, in order to avoid colonization.

Rili Djohani [1995] reports the changing life syle of the Bajau with respect to marine environmental issues at several national parks in Indonesia, especially at Bunaken in North Sulawesi. She discusses the possible roles that they can play, for example, as eco-tourism guides, in conserving their marine environment and resources.

Akimichi Tomoya, who before had conducted extensive and intensive field research in a number of fishing communities in Oceania, especially the Solomon Islands, is now engaged in the study of fishing communities in Indonesia, including those of the Bajau in Halmahera and Sulawesi. He has recently published a valuable volume [1995b] on maritime anthropology, in which he discusses the culture of fishermen in a comprehensive way. He explores significant issues, such as indigenous knowledge of fishing, sailing, and ecology, the ethno-network created through the local exchange or trading of marine products, and the local management and conservation of marine resources.

Prospects for Future Study

An attempt was made by the Indonesian Institue of Sciences (LIPI) in Jakarta in 1993 to discuss for the first time problems concerning the sea nomad population in an international forum. This was followed by the International Sama/Bajau Conference held in Kota Kinabalu in 1995, a joint effort by the Sabah Bajau Arts and Cultural Association and the Yayasan Sabah. The over one hundred participants from several countries who attended both meetings are an indication of increasing interest among scholars in maritime populations. Murai Yoshinori [1994], Nagatsu [1994b], and Lapian et al. [1995] reported on the Jakarta seminar, and James Warren [1996] on the latter conference.

While social change was still the major concern of the papers presented at both meetings, remarkable were the issues raised about the environment, such as marine resource conservation, its management, and ecological adaptation. Since in most cases the life of the Sama-Bajau is deeply interwoven with the marine environment and their communities exist around or on coral reefs, it is only natural that researchers dealing with marine ecology, in addition to students of Bajau culture and society, have paid special attention to the Bajau involvement in this marine environment. It is notable that a considerable number of non-governmental organization (NGO) workers on environmental issues also attended the seminar in Jakarta.

Apart from issues on environment, at the conference in Kota Kinabalu topics on inter-ethnic relations, linguistics from a macro point of view, and material culture seem to be attracting the attention of scholars recently [J. Warren 1996]. It should also be noted that the area covered by the papers was more extensive than ever before. A lot of papers dealt with Sama-Bajau communities in Sulawesi and the northwestern coast of Sabah, in addition to those in Sulu and northeastern Sabah.

In conclusion we would like to list some issues that we expect will be further studied in the near future.

1. *Creation of a Database*

Basic data on Bajau population, language, oral traditions, material culture, social organization, etc., is still lacking in several areas, especially the eastern part of Indonesia. It is necessary to collect this information and set up a database, including data contained in published papers, sorted by categories and areas, in order to enable comparison of the Sama-Bajau in one area to those in another and detect different and common features, if any, of the Sama-Bajau in widely scattered localities.

2. *Social Change after the 1970s*

Valuable contributions have been made in the study of Bajau social change, mainly during the 1960s and 1970s. Changes after the 1970s, however, are more profound and considerably more dynamic and serious. It is highly important for present field researchers to examine the changes occurring in the area of social relations from the 1970s to the 1990s against social changes examined in the previous period.

3. *Social and Economic History*

It is also necessary to describe the long-term social and economic history of Sama-Bajau communities and life histories of Sama-Bajau individuals from their oral history and written materials. Such research would contribute to a better understanding of migration patterns, in addition to a better knowledge of long-term social transition processes.

4. *Environmental Issues*

With the growth of worldwide concern over the environment, the interest has grown remarkably in the Sama-Bajau involvement in their marine environment. These studies mainly concern both traditional and recently changing patterns of their economic activities at sea in terms of their exploitation of marine resources. However, it is also important to explore their knowledge (so-called ethnoscience) about marine environment and resources.

5. *Influence of Nation-States*

Unlike before, Sama-Bajau communities are no longer free from the framework of the nation-state: viz. the Philippines, Malaysia, and Indonesia. Studies in this regard demand the investigation of, for example, the impact of development policies, national education, government-regulated economic activities, etc. In other words, problems of national integration and the like could be studied from the viewpoint of the Sama-Bajau, whose communities are scattered over an area covering the three nation-states.

6. *Comparative Studies*

For a more comprehensive understanding of Sama-Bajau societies, comparative studies are of great importance. These studies should include comparisons of both various Sama-Bajau groups and other maritime people, especially ethnic groups generally called Orang Laut in and around the Riau Lingga Archipelago. These studies would add deeper insight to the nature of the maritime world of Southeast Asia.

7. *Sama-Bajau Participation*

Although the seminar in Jakarta was attended by several Sama-Bajau participants, little opportunity was presented to them to express their own views on the issues discussed. Considering the nature of the subject matter, it is important for scholars to invite Sama-Bajau people to such seminars not only as commentators, but also as authors of papers presenting their own reports.

Select Bibliography

This bibliography is a revised version of the bibliography which was published in Lapian et al. 1995. Research pubished on sea nomadic populations other than the Sama-Bajau are also included.

Abbreviations:

BMJ	*Brunei Museum Journal*
BRB	*Borneo Research Bulletin*
BTLV	*Bijdragen tot de Taal-, Land- en Volkenkunde*
JMBRAS	*Journal of the Malayan Branch of the Royal Asiatic Society*
JSBRAS	*Journal of the Straits Branch of the Royal Asiatic Society*
PS	*Philippine Studies*
PSR	*Philippine Sociological Review*
SMJ	*Sarawak Museum Journal*
SSJ	*Sabah Society Journal*
TITLV	*Tijdschrift voor Indische Taal-, Land- en Volkenkunde*

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Annex 6

EXTRACT FROM AN ARTICLE PUBLISHED IN THE "JAVA BODE" IN FEBRUARY 1882, AND REPUBLISHED IN THE "SINGAPORE STRAITS TIMES" OF FEBRUARY 9, 1882, REPRODUCED AS AN ENCLOSURE IN A LETTER FROM SIR RUTHERFORD ALCOCK, CHAIRMAN OF THE NORTH BORNEO COMPANY TO EARL GRANVILLE

Inclosure 2 in No. 96.

Extract from an Article published in the "Java Bode" in February 1882, and republished in the "Singapore Straits Times" of February 3, 1882.

MR. DENT having complained to the correspondent of a Rotterdam paper of the Dutch removing the boundary-line on the north-east coast of Borneo from where it was fixed in 1846, and declared that he deemed the planting of the Netherlands tricolour within the territory granted him by the Sultan of Sulu a hostile act, the "Dagblad" of the 7th January sets forth the facts of the case in a lengthy article, based on official documents, which come, in short, to the following:—

In 1846 M. Rochussen, then Governor-General of Netherlands of India, by resolution published in the official "Java Courant" of the 26th February in that year, provisionally fixed the boundary-line of Netherlands territory in north-east Borneo at the parallel of 3° 20′ north latitude, that being the frontier of the vassal state of Bulongan. But at the same time he expressly reserved any claims the Netherlands might lay to districts beyond the boundary thus fixed.

So matters stood until 1877, when in an official Colonial Report, laid before the States-General, the following statement was made:—

"To check piracy it is intended, in the next fair season, to station cruizers in the waters of Berou/Bulongan and Sessajap (the northernmost boundary of our possessions on the east coast)."

Now this district of Sessajap is situated beyond Rochussen's boundary-line, but still south of the Sibuco River, from which it is separated by two smaller districts.

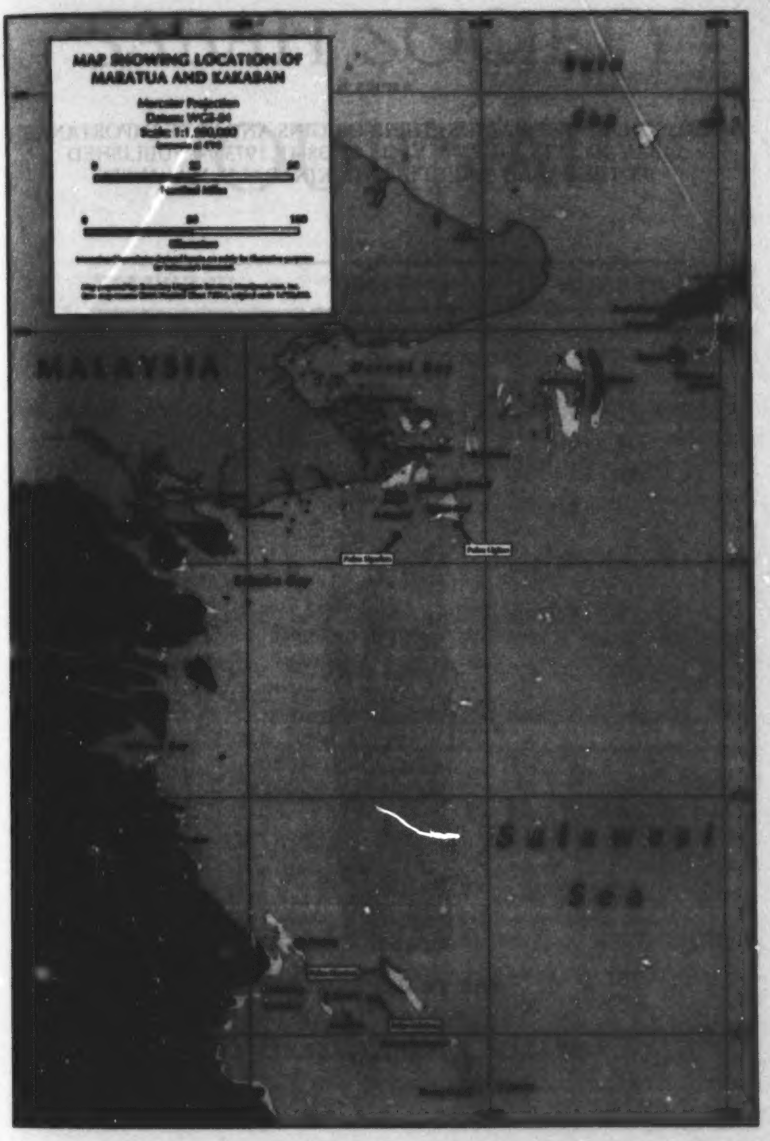
After the limits of the Concession granted to Messrs. Overbeck and Dent had become known, it was announced in the Colonial Report for 1880 that the Netherlands boundary-line had been extended not only to the Sibuco River, but also beyond it to the north, under the following circumstances:—

In May 1879 the Assistant Resident of Cotie visited the districts beyond the frontier as it then stood, and inquired of the inhabitants whether they owed allegiance to Bulongan or Sulu. The people inhabiting the districts up to the Sibuco River having been found to own allegiance to Bulongan, which State had been included in the Netherlands dominions since 1846, the said districts were declared to be Netherlands territory. But, unfortunately, the inhabitants of one village therein, who were emigrants from the country to the north of the Sibuco, declared that when they dwelt in their previous Settlement beyond that river they considered themselves as subjects of Bulongan, whereupon the boundary-line was extended into the Dent Concession as far as Tarran River, where the Netherlands flag was permanently hoisted, and an armed boat afterwards stationed to ensure the observance of the demarcation thus drawn. This debatable land between the Sibuco and Tarran Rivers is described as being uninhabited. Such being the facts, the "Dagblad" regrets that the frontier was not fixed in 1879 at the Sibuco, the natural boundary river up to which the people south of the same had fully acknowledged allegiance to the State of Bulongan, instead of being extended into territory claimed by the North Borneo Company, for the sake of including a strip of land destitute of inhabitants, where there was hence not a single native who desired Netherlands sovereignty.

The "Dagblad," in commenting on what it calls the inexcusably imprudent statement in the Colonial Report for 1877, that Sessajap was the most northern Dutch boundary point in north-east Borneo, declares that the Netherlands Government deserved to be taken at its word by the North Borneo Company, by the latter annexing the districts south of the Sibuco to Sessajap.

Annex 7

MAP SHOWING THE LOCATION OF ISLANDS OF MARATUA AND KAKABAN


MAP SHOWING LOCATION OF
MARATUA AND KAKABAN
Mercator Projection
Datum: WGS-84
Statute Miles
Kilometres
Sulu
Sea
MALAYSIA
Darvel Bay
Sulawesi
Sea

Annex 8

HARRISSON, T., "THE BAJAUS: THEIR ORIGINS AND WIDE IMPORTANCE", *SABAH SOCIETY JOURNAL* VI (1), PP. 38-41, 1973-74, PUBLISHED BY THE SABAH SOCIETY, KOTA KINABALU, MALAYSIA

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The Bajaus: their Origins and Wide Importance

Tom Harrisson

Today in Sabah the Bajau peoples are enjoying an earned period of prosperity and importance, whereas in the past, here and elsewhere, they were treated usually as "odd man out", "water gypsies" and other condescending classifications.

The early accounts in the *Royal Annals of Brunei* show, however, that the Bajaus played a very important part in the early days of the great Sultanate, often playing a major role in deciding sea-power policy and marrying into the "Malay" aristocracy, up to the highest level.

The first European accounts of Sabah describe the Bajaus as a purely coastal people. Spenser St. John, in his classic "*Life in the Forests of the Far East*" (published in 1862, shortly to be re-issued by the Oxford University Press, Kuala Lumpur), regarded them as "very expert fishermen" or (when not at sea) pedlars of salt, iron and cloth, penetrating far inland (Vol. I p. 237).

This was still much the Bajau position when the first Brtitish Resident, W. Pretyman, arrived 20 years later.

Their early role as inland traders in the marine off-season was important. Further south and west the Maloh of the Kapuas in Kalimantan filled a similar trading role, far over into Sarawak, during the old head-hunting days when Chinese and Malays rarely cared to trade far inland. In that way, the Bajaus got to know the hinterland. In Sabah, once there was a settled government, they found plenty of room for expansion around Kota Belud. Today they are the dominant people in this district.

This complete change over from "sea gypsies" to expert rice-farmers, and pulo-playing pony riders, is a major transformation that has not been sufficiently appreciated. Several younger anthropologists (all American) have studied the Bajau in Sabah (Clifford Sather at Semporna) and in the Sulu Sea (H.A. Nimmo and Tom Liefer). But they have been concerned with social anthropological aspects, and have paid little attention to the fascinating story of origin, evolution and (inside Sabah) extraordinarily rapid, successful change: change of the whole way of life.

The only at all adequate background on the Bajaus as a whole is "*The Sea Nomads*" by David Sopher of Syracuse University, New York, (published by the National Museum, Singapore, 1965 and still in print — it deserves more attention than it has received locally). But my friend Dr. Sopher would be the first to admit that his bulky work was prepared for his doctoral thesis entirely from older published literature while he was a student. He probably never saw a Bajau or came to Southeast Asia. The book therefore suffers considerable defects in understanding, while remaining an invaluable reference source and general guide. In particular it shows how very extensive and important Bajau-type boat-people were in this part of the world in earlier times, their influence reaching from the Gulf of Martaban in Burma through Indonesia and Malaysia to the Celebes and on eastward, at times even touching Australia (for the *trepang*, sea-slug trade, especially).

In these days of political fragmentation and administrative classification (especially hair-splitting classifications as a sort of an anthropological word-game), it is becoming extremely difficult to "see the Bajaus whole", or their Asian role broadly, present or past. They now have many names (e.g. Orang Selatar at Singapore and Johore); or — as at Kota Belud — large elements have settled ashore, to be soon classified as something "different" from their cousins (or their great-great-grand-cousins) who remain, diminishingly but determinedly, afloat.[1]

These considerations are not raised in any critical let alone academically carping spirit. What is important, though, is that we should not get absorbed in the smaller, localised studies, so far as to forget the wide role. In the present writers' reading of Bornean history and prehistory, the Bajaus — using the term broadly and without pedantry — have played a key contact role in the circulation not only of the island cultures but of inter-human relations throughout the region.

Point has been added to our present appreciation of this past role by recent archaeological research further south in the Sarawak River delta, as well as further north in the Sulu archipelago between Borneo and the Philippines.

As a result of over a decade of investigations in the delta, Prof. S.J.O'Connor and I came to the conclusion that the great iron and ceramic trade with China which began there around 700 A.D. and went on until about 1350 A.D. was probably not carried direct or in Chinese-owned vessels as has generally been thought. We thought that an intermediate carrier, perhaps in quite small craft, acted as a go-between, a role of marine equivalent to the inland Bajau pedlars described by St. John in 1862 (see "*Prehistoric Iron Workings in West Borneo*" (2 vols.) and "*Gold and Megalithic Activity in Prehistoric and Recent Borneo*", both published by Cornell University at the Southeast Asia Programme, 1969 and 1970 respectively).

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[1] A Good account of how the Chartered Company set about settling down the Bajau, from 1879 onward, is in James Warren's memoir published by the Ohio University Centre for International Studies, Athens, Ohio, 1971 See also Clifford Sather in *Sarawak Museum Journal*, XIX, 1971 : 281—2.

(A modified version of the same article appears in *Sabah Society Journal* Vol. V., No. 4, Sept. 1972, pp. 288—361—Ed.)

Some of the reasons for reaching this conclusion were negative. One was the absence of evidence for any Chinese presence other than in the form of their ceramics and coins — and Chinese coins were currency when Magellan reached Brunei in 1521 A.D., or still in Bali until quite recently. On the positive side one of the things that impressed us most was the abundance of a type of pottery demonstrably made by the Bajaus in more recent times — as described by the Almans in their booklet "*Handcraft in Sabah*" (Borneo Literature Bureau, 1968) and by the late I.H.N. Evans (in *Sarawak Museum Journal*, VI, 1955: 297—300).

Nearly all the Sarawak River delta soft earthenware — as opposed to hard Chinese stoneware and porcelain — was of this Bajau sort. The most distinctive form is a kind of lidded box with a pronounced knob on top. Dr. W.G. Solheim, the foremost expert on Asian prehistoric pottery, has termed these "*phallic tops*", based on his study of a delta series (*Sarawak Museum Journal*, XII, 1965: 1—62). Phallic tops date back to well before 1,000 A.D. in the Sarawak excavations. What is so extraordinary about them is that they survive, without any great change, into the present. The Sabah Bajaus have continued making them in this century. There are plenty of examples in the Museums (see Evans, Almans for illustrations of modern forms). Moreover, they occur over an equally long time-span in the Sulu archipelago, where they have been noted in recent archaeological reconnaissances by Dr. Alex Spoher of Illinois University ,U.S.A.

Still more remarkably, we have identified unmistakably related "*phallic tops*" right out across the Pacific as far east as Fiji, where they occur again in prehistoric contexts — dating over 1,000 years ago, to the early days of Polynesian island colonisation (see *Sarawak Museum Journal*, XVII, 1969: 96—99: *Asian Perspectives*, XI, 1968: 119—123, for good illustrations of early examples).

Is it possible that these were carried by early ,pioneer sailors in the great days of the Bajaus, implied by David Sopher; and by our excavations! The evidence of course is still conjectural. But that is the only way to proceed with this type of problem once one leaves recorded history and gropes back into the past and only by putting up hypotheses, by being bold with ideas, can we hope (with full subsequent argument and counter-argument) to think out the processes of time and thus seek new evidence for and against, and to come up at the end with the most likely answers. It is for this reason, as well as for the intrinsic interest of the theme, that I put these ideas in the *Sabah Society Journal* now, in the hope that others on the spot will take a deeper look at the Bajau past — especially at Bajau folk-lore and spoken tradition. Too little of that has been preserved. Soon it will be too late to recover the old. It needs doing now. Members of this Society are among the people who should and could do it.

Annex 9

SATHER, C., "THE BAJAU LAUT" IN V.T. KING (ED.), *WORLD WITHIN: THE ETHNIC GROUPS OF BORNEO*, PP. 222-249, S. ABDUL MAJEED & CO. PUBLISHING DIVISION

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8

THE BAJAU LAUT*

CLIFFORD SATHER

The Bajau

THE Bajaú are a diverse, culturally fragmented population, numbering some 72,000 persons in Sabah, spread unevenly in scattered villages and hamlets along the eastern and north-western coasts of the state, and so southward to Kimanis Bay on the west. An additional 90,000 Bajau are present in the southern Philippines and a further 30,000 to 40,000 in eastern Indonesia, chiefly in coastal Sulawesi.

Like most other north Borneo peoples, the Bajau speak dialects of a Philippine-affiliated language, not all of which are mutually intelligible. The term 'Bajau' was originally applied to the group by the Brunei Malays with whom those living on the west coast maintained intermittent contact, sometimes hostile, especially during the eighteenth and early nineteenth centuries. The Bajau refer to themselves as *a'a sama* or by dialect variants of these terms. *A'a* means simply 'people' and its use implies recognition of common cultural links and the use of a shared language (*ling sama*). The Bajau have never constituted a unified political entity however, and prior to European penetration local communities in Sabah and the southern Philippines were under the tenuous jurisdiction of the Sulu Sultanate, and in eastern Indonesia, Buginese, Makassarese, and lesser political units, most of them dominated by non-Bajau rulers or their local political agents.

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* Field research among the Bajau Laut was carried out in 1964-5 with the support of a NIMH fellowship and research grant (MH 10139-01). An additional brief visit was made in April 1974. I wish to thank the headman of Kampong Bangau-Bangau, Panglima Tiring, and his family, with whom I lived during my initial stay, and my other Bajau Laut friends, too numerous to mention by name for their generous hospitality. I am also indebted to Dr. G. N. Appell for reading and commenting upon earlier drafts of this paper, some parts of which, in a very different form, were read at the annual American Anthropological Association meetings. Washington, D.C., 1967.

Within this complex, variegated social world, the Bajau have historically occupied a special niche, as island or strand-dwelling fishermen, shoreside farmers and marine collectors, and, while pronounced local differences exist, most settlements remain heavily dependent on the sea for subsistence, trade and outside contacts. In Sabah, the Bajau comprise more than two-thirds of the indigenous fishing population.[1] But economic patterns vary. Along exposed sections of the western coast fishing is supplemented annually by occasional farming, wood-cutting and casual trade, and in the heavily settled Tuaran and Kota Belud Districts most Bajau live inland from the immediate coast and practice a mixed farming based primarily on wet-rice cultivation and cattle-rearing. Because the western coast is more sheltered, particularly from the south-west monsoon and intermonsoon, fishing is more reliable and the irregular, embayed nature of the coastline, and the existence of extensive offshore islands and reefs, permit more specialized fishing adaptations, of which the Bajau Laut represent an extreme example.

The Bajau Laut

The Bajau Laut are the most maritime of all Bajau-speaking groups. In the past they relied exclusively on fishing and the exchange of fish and other sea products for their livelihood. As a group they were, and remain, almost entirely without farmland or other property ashore, except for burial sites which belong in common to several neighbouring communities and represent their principal point of land connection. Until 1930 the Sabah Bajau Laut lived wholly in boats. Since then most families have built pilehouses for themselves over the sea, and only a few, less than 20 per cent of the total population, remain permanently boat-dwelling. At the same time barter exchange with more sedentary groups ashore has been replaced by the disposal of fish through commercial market channels, resulting in the breakdown of political clientage by which the Bajau Laut were previously bound to the neighbouring groups with whom they traded.

At the present time the Bajau Laut occupy two relatively large pilehouse villages, Bangau-Bangau and Labuan Haji, with a combined population of some 1,300 persons, located near the extreme eastern tip of the Semporna Peninsula in south-eastern Sabah. Additional, widely dispersed settlements, consisting either of pilehouse villages, or, less often, of houseboat flotillas identified with fixed, recurrently occupied anchorage sites, are found throughout the Sulu Archipelago of the Philippines and over a wide area of eastern Indonesia (cf. Sather, 1971, 1975; Sopher, 1965). The Semporna Bajau Laut are part of a smaller regional group that includes six additional communities in the Sibutu Island cluster of the Philippines. Individual settlements within the region vary in size from three to four households to more than 100 (e.g. Sitangkai) and are interspersed with and sometimes interpenetrated by the villages of other coastal and island peoples, chiefly Tausug and other Bajau-speaking groups. The Bajau Laut identify themselves locally as the *sama laut* or *sama mandelaut*, the 'sea Bajau' or 'maritime Bajau' (*sama*), and are linked, on an interpersonal level by ramifying ties of kinship and intermarriage, by frequent visits and occasional participation of families from different villages in large-scale fish netting drives (*ambit*).

The Local Community

Families from the two Bajau Laut villages in Sabah fish the offshore reefs, coral terraces and shoals that fringe the Semporna Peninsula and outlying islands of the Sulu Island shelf. Because of the distance and scattered location of their main fishing grounds, fishing is done primarily in the course of extended voyages lasting from one or two days to several weeks or longer. Voyages are undertaken by separate conjugal family boat crews (*dabalutu*), the members of which live for the duration of each voyage on board a small sea-going vessel belonging to the family head and equipped with a portable sleeping quarters, foodstores and hearth. While at sea, family members carry on their everyday domestic activities entirely afloat, putting into shore only to collect additional firewood, to dry nets or take on food or water supplies, and their association with other families is limited to those with whom they are sailing or happen to encounter at sea. While fishing the conjugal family thus forms an independent productive and capital-bearing unit, and its members enjoy exclusive control over the disposal of whatever catch they land except for a small share reserved for their own consumption and for distribution among housemates and neighbours in their home village.

Owing to the constant coming and going of village families, the local settlement (*lahat*) is a relatively fluid grouping, with few corporate characteristics, and the fundamental social and economic units are large, multi-family households (*luma'*) and household clusters (*ba'anan*). Village households typically contain several conjugal family fishing units whose members live together in joint occupancy of a single pilehouse dwelling belonging to a common 'house leader' (*nakura luma'*) for as long as they remain in their home settlement. Fish reserved for consumption (*pamillah daing*) are pooled primarily within the luma' and the larger, more inclusive cluster. Here too are focused most significant social relations and daily interaction. Household clusters are organized around alignments of related house leaders and consist physically of tightly aggregated groups of adjoining pilehouses.

Together, households and clusters are largely autonomous groups, united, in making up the village, in loose confederation from which withdrawal, and to which the entry of additional families or households coming from other settlements, is possible at any time, largely as the heads of these groups see fit. While various ties of friendship, economic convenience and personal kinship and affinity unite village members, there are no enduring ties, such as common descent, that attach these groups to one particular settlement rather than another; movement between communities is relatively common, and is easily possible, provided newcomers are acceptable to their village neighbours or, if they join existing domicile groups, to their senior house leaders. A large proportion of the members of any village are ordinarily related as cognates, or by marriage, but settlements are not kin groups, either ideally or in practice. The village is rather a local community, corporate only in the limited sense that its members share a common *addat*, safeguarded by its headman and other senior household elders. The fishing grounds exploited by village members are unowned, and overlap with those exploited by the members of other settlements, with the result that those who have newly taken up membership enjoy the same rights of use to these grounds as established villagers. Moreover the community as a whole never functions as a corporate economic unit, either in terms of co-activity, or as a group with control over resources.

Political leadership within the village is vested in the senior house and cluster leaders and no strict separation at this level can be made between domestic and politico-jural relations. Jural support is marshalled within the household and among ba'anan allies. The leaders of these groups have responsibility for securing the political interests and formal jural rights of their followers (*tindug*) and of acting on their behalf as spokesman, or counsellors, in the event of litigation with members of other domicile units. [illegible] the ritual sphere, house leaders are recognised as the formal sponsors of all major rites involving household members, primarily marriage, circumcision, burial and rites of thanksgiving (*magmaulud*), and the household, rather than the village, forms the principal congregation that comes together in the performance of ritual. An official village headman, recognised in office by the State and given the Malay title *orang tua*, is chosen by the villagers from among the heads of the largest household clusters in the settlement. Within the village, his role is confined chiefly to convening village moots, or mediation sessions, whenever an open breach of addat or a serious dispute arises between households that cannot be settled informally by the principals involved. He commands very little authority, except by dint of personality, outside his immediate luma' and ba'anan, and cannot impose a decision or judgement on the community without the full concurrence of its other household elders. Thus, positions of leadership are bound up with familial statuses and a person's relations with the members of his own and other village households.

Kinship

The Bajau Laut trace kinship bilaterally and assign equal importance to relations between the father's and mother's kin.[2] The total field comprising all of an individual's known, or presumed, cognatic kin is termed his *kampong*. Within the kampong are numerous descent lines, called *turunan*, leading back to particular ancestors. Recognition of ancestry is generally shallow, and is rarely reckoned beyond four or five generations, but when collateral branches are added to these lines, acknowledged cognatic relations ramify widely. All descendants, through both males and females, of an individual's two sets of grandparents constitute a narrower cognatic category, called *dampalanakan* or *dampo'un*, the members of which are counted as 'close' (*magsekot*) kindred in both social and genealogical terms. All cognates are additionally placed in a limited set of terminological categories, defined primarily by sex, generation, and collateral distance, to which are attached specific social rights and obligations that, in total, provide the individual with a guide to the behaviour expected between himself and his different classes of relatives.

Neither the kampong nor the dampalankan is a kin group, as such, and both exist only in reference to a particular individual. However, dampalanakan ties, and relations between primary kin (*taianakan*) within the category, provide the basis on which the cognatic members of households and clusters are recruited and the scheme of rights and obligations that govern their behaviour towards one another. The significance of households and clusters is that they impose a form of 'closure' within each individual's personal field of cognatic relations, singling out those cognates, and by extension their spouses, with whom an individual is joined in continuous, daily transactions based on long-term expectations of mutual support (*nabbang*), sanctioned by moral values and the authority of group elders. While neither the household, conjugal family, nor cluster coincides entirely with Ego-centric categories of close kindred, cognatic ties outside these groups may be only selectively recognized, or even ignored entirely in specific social situations. Relations between members, however, are constantly in play, and support for one another can only be withheld by revoking membership itself. Thus, the categories by which the Bajau Laut order cognatic relations reflect not only their individual social behaviour, but provide the framework within which cohesive groups—families, households and clusters—emerge as part of the basic structure of their society.

The presence of large, extended, or multiple family households, and their association in kindred-based residential groups, has not been adequately described for cognatic societies.[3] The extended family, in particular, is frequently thought to presuppose some form of lineal or descent group organization. Thus, Murdock (1960) treats extended family households, for example, as minimal units in societies internally divided into corporate descent groups, and, on this basis, takes their presence or absence as a typological feature in classifying cognatic social systems.[4] Descent is not, however, a significant feature of Bajau Laut social organization, and the structure of village domicile units—households and clusters—is fully consistent with the bilateral nature of Bajau Laut society, nor does the presence of these groups preclude the functional importance, particularly in the context of sea voyaging, of the conjugal family, as a separate social unit.

The Conjugal Family

At sea the minimal, and only permanently constituted, social unit is the conjugal family boat crew (dabalutu) consisting typically of a fisherman, his wife and their dependent children. Married women regularly accompany their husbands, except on very brief voyages, or occasionally when pregnant or with newborn infants to look after. The longer the voyage, the more important a wife's presence becomes, not only domestically, in preparing meals or caring for younger family members, but in the arduous work of cleaning and splitting fish for preservation by salting or sun-drying. New crews are formed at the time of marriage and family members work together as a single fishing team as long as the group persists, using a boat, drift nets and other gear belonging to the family head, either alone or with other family crews, under the husband's supervision. Decisions regarding when and where to fish, and with whom, are made independently by the head of each family, in consultation normally with the other family heads in his village luma', and are arrived at in terms of the immediate needs of his family, as well as the decisions of their other partners and reports of landings being made by returning fishing parties.

The intensity of fishing activity, and the pattern of movement of village fishing teams, is governed primarily by wind and tidal conditions and the seasonal appearance of pelagic fish at known netting sites within an area of some 40 miles radius surrounding each settlement.[5] While the intensity of fishing varies, there are no well-defined periods in which netting is totally suspended, except for brief, irregular intervals, rarely of more than one or two days' duration, during local squalls or rainy weather. Most families spend roughly a third of each year at sea, divided between some 20 to 50 voyages. Driftnets are the chief gear used and allow considerable variation in the deployment of labour. A single length of net may be used alone, or it may be tied by the head and footline to additional lengths of net belonging to other families to form engulfing or encircling structures, the largest of which may be several hundred feet across and require as many as 50 to 60 family crews, possibly drawn from four or five separate villages, to set in place and operate. Most netting is done by smaller teams consisting of from two to six families, but the pattern of fleet alignments is highly variable and single families may equally well fish alone or in temporarily assembled parties, occasionally of considerably larger size and possibly recruited across village lines.

Each family head has a small circle of some 5 to 12 fishing partners, or frequent 'companions' (*sehe'*), with whom he and his family repeatedly join to form these smaller, recurrently assembled netting teams. For each family head, these persons comprise a personal roster from which he repeatedly selects team-mates; thus it emerges as a relatively lasting 'quasi-group', or action set, formed specifically for co-operative netting. Relations between roster members are relatively stable and are based primarily on close cognatic kinship and affinity. Partners are most commonly men of the same generation, most often brothers or husbands of sisters, although a younger man may join the roster of his father or father-in-law until he is able to form sufficient partnerships among his own related age-mates. Although roster ties are relatively stable, the smaller teams mobilized on this basis vary in size and rarely have precisely the same composition for more than two or three consecutive voyages. Moreover, not all members of an individual's personal roster are necessarily members of each other's rosters, although most team-mates have at least one frequent 'companion' in any party they join. Alignments are short-lived and teams disband at the conclusion of every fishing venture. Although they may regroup at the next opportunity, individual families may also fish alone, or with others, some or all of whom are unrelated by roster ties. Thus, for the individual family head, his personal roster grades into a wider periphery of more casual, irregular alignments entered into out of a short-term need for labour, pooled gear, or through the fortuitous presence of other family crews at the same fishing site. The constituent family is the only permanent group which persists as individual parties are repeatedly formed and disbanded; reflecting its fundamental independence, the landings realized through co-operative fishing are divided equally between each participating family crew regardless of its size or the tasks performed by its members. On the other hand, alignments between families are highly fluid, with the result that fishing parties of varying size and composition can be rapidly assembled, or disbanded, as landings alter and the main centre of fishing activity shifts from one site to another.

The Village Household

Exchange and the distributive aspects of the economy are organized, in social terms, along quite different lines than those of production. At sea the conjugal family is an independent productive unit, and its members, even when aligned with others, fish chiefly for themselves, using gear belonging to the family head. At the same time, each family is bound by generalized obligations to assist others within its home village, and, as a result, production is geared to a system of communal consumption and mutual support centred in the larger village households and kindred-based clusters. The importance of these groups is that they attach each family to a set of larger, more enduring social groups, the members of which are joined by long-term commitments of mutual political support, food pooling and shared access, through reciprocal lending and gift exchange, to the material assets, monetary resources and labour help of their separate members. As a way of consolidating ties, endogamous marriages are frequently arranged within household clusters, so that these groups additionally supply their members with a pool of preferred, potential marriage partners.

Of these two groups, the household (luma') is the most important. Minimally, a household contains a single conjugal family or, more frequently, a set of closely related families or partial family units whose members live together in a single dwelling under the authority of a common house leader or nakura luma'. In describing the household, the Bajau Laut lay stress on the criterion of co-residence and use the same term, luma', for both the house, as a physical structure, and the group of housemates who occupy it. In everyday speech, the latter are spoken of as *siga* . . . or *kami daluma'*, 'those . . .' or 'we of one house'. Despite this emphasis on co-residence, luma' membership is restricted to persons who are primary kin of the house leader or his wife, or are the offspring or spouses of the couple's primary kin. In other words, the luma' is also a close-knit unit in a genealogical sense. Structurally, it most often contains what Murdock (1949:35) has termed a 'bilocal extended family'. This he defines as a family that 'unites the nuclear family of a married couple with those of some but not all of their sons, of some but not all of their daughters, and of some but not all of their grandchildren of either sex'. In the case of the luma', however, only a minority of households actually contain the nuclear family of a grandchild or grandchildren of a still living nakura luma', and, as we shall see presently, the group lacks Murdock's further criterion of 'indefinite continuity over time' (1949:33). In Bangau-Bangau, the largest of the two Bajau Laut villages in Sabah, 60 per cent of all village households contain three- or four-generation extended family units, and the remainder either smaller stem (21 per cent) or conjugal families (19 per cent) (cf. Sather, 1976). The luma' is also a domestic group and its members additionally prepare and eat their meals in common, contribute to a joint budget and share responsibility for everyday domestic chores and for the upkeep of the dwelling, its attached boat landing platform (*pantan*), hearth (*kusina*), and the plank walks, if any, that join it to neighbouring houses.

(a) *Household structure*

The village household is characteristically a large, structurally complex family unit. In Bangau-Bangau mean household size is 12.2 persons; the mode is 9, and the range is 6 to 22 persons. Two basic features underlie its structural composition. The first is that newly married couples never establish a separate household of their own, but begin their married life as dependent members of an existing household headed by a senior house leader, ordinarily the husband's or wife's father. It is only after a number of years, when the pair has established their own family of procreation, and their eldest children have reached, or are approaching, marriageable age, that the couple is likely to secede from the parental household and set up an independent luma' of their own with the husband as founder and house leader. Because secession is delayed, the couple's eldest children will begin to marry, in the normal course of events, shortly after the new household is founded. While some may marry out and so become members of other luma', at least one child, and more often several, will remain to rear their own families in the newly established luma'. Thus, the household rapidly grows into an extended family unit containing, in addition to the senior pair, their still unmarried children and the families of those of their married offspring who have chosen to remain in their luma'. At this point, once dependent families are added to the group, its continuance, unlike that of the conjugal family, is no longer wholly dependent on the stability of the house founder's marriage, and the household is usually large enough to function as a domestic group even if divorce or death occurs in its senior generation. The household, thus, becomes a more stable group in the sense that its continuance is no longer bound to the survival of a single conjugal unit.

The second feature is that the household is only temporarily self-perpetuating. As the house founder and his wife reach old-age and their grandchildren come to maturity, their children ordinarily depart to found new luma'. By the time the last of their children is ready to make good its independence, the original dwelling is usually abandoned or dismantled. When this occurs, the family unit initially established by the aging pair is dissolved. Occasionally, a house may be inherited by one of the couple's children, preferably the youngest (*anak kebangsuan*). But this is only a temporary measure, adopted until the remaining husband to whom control of the dwelling has passed is in a position to build a new house and found a separate household to which the parental couple, if still alive, will normally attach themselves as dependents.

Following its establishment the household thus undergoes a regular cycle of growth, fission and dismemberment ending with its eventual dissolution and replacement by similarly constituted groups headed by persons who were once dependents in households now undergoing dismemberment or dissolution. Structural continuity is achieved not by the perpetuation of individual households, but rather by the constant cycle of development they undergo and the permanent processes of group recruitment and fission that underlie it. These give the household, throughout its major developmental phases, a stable structural form despite changes in its personnel.

Under ordinary circumstances the conjugal family emerges as an independent domestic unit only for a brief interval at the time a new household is founded. Following the marriage of the eldest of the house founder's children, the luma' enters a 'phase of expansion', which continues as each of the couple's remaining offspring takes a spouse. With the subsequent birth of grandchildren to those children who remain in the household, the luma' enters a 'procreative phase'. At this point the household loses the original unity it possessed as a single conjugal family and becomes an internally differentiated, extended or multiple family unit.

This internal differentiation foreshadows the eventual partition and ultimate secession of component families in a final 'hiving-off phase'. Every man should ideally head his own household some time before the end of his wife's childbearing years, provided the couple are able to form a stable, fruitful union. Most couples achieve this goal, with the result that all luma' containing more than one dependent family undergo eventual partition. The ultimate lines of cleavage along which secession occurs are evident from the moment the first in-marrying husband or wife joins the household. Following marriage and the birth of children to the house founder's dependents, relations between the nakura luma' and his children, and among the heads of the dependent families under his authority, come into sharp focus as adult housemates acquire new, and at times diverging, interests and responsibilities. For a number of years the nakura luma' is generally able to contain conflict within the group, but other factors also work to delay partition and preserve close, amicable relations, even after secession takes place. For one thing, the dispersal of separate conjugal families on fishing voyages provides a periodic escape from household tensions, and, for another, young married men are often economically dependent on the house founder or other, older more experienced fishermen until their children are old enough to assist them actively at sea. But most importantly, the potential for conflict within the luma' is reduced, and the movement of persons in and out of the household is made relatively easy, by the lack of a corporate estate controlled by the group, or administered by the house leader, that might otherwise have to be divided or left behind by those who secede from the group. The household as a whole is not a property-owning unit, and each married couple holds whatever property they acquire subsequent to marriage, or receive through inheritance, independently of both the house leader and their other housemates.

When secession occurs, the departing couple simply removes its belongings to the new dwelling which the husband has built with the help of his former housemates. It is usual for the nakura luma' and his wife to settle property on their children as they leave the luma', either at marriage or upon the completion of their family of procreation. As a result, by the time that all but the last-born child have departed, most of the older couple's heritable possessions (*pusaka*) will have been bestowed, except for the house and a small residual share of property reserved for the youngest child. Property bestowal is thus closely keyed to the process of partition. In addition, the lack of a corporate estate vested in the household as a whole, particularly in the form of land or other durable, productive resources, means that there are no compelling property interests that might otherwise preserve the authority of the aging house leader or justify the continued membership of his dependents in a common household once they and their families are able to form viable domestic groups of their own.

The final result of partition is the termination of the original household. This occurs upon the abandonment of the dwelling initially erected by the house founder. Most houses can stand for 30 or 40 years, or as long as their piles (*tu'ut tambelian*) remain sound and capable of supporting the upper structure. Less durable materials, however, such as flooring or wall planks, require periodic replacement. In the course of renovation, the structure itself may be enlarged, or parts of it dismantled, with the result that the house, as a physical structure, closely reflects the numerical strength and material resources of its occupants. And eventually every dwelling is pulled down or abandoned, marking the final dissolution of the domestic group established by its founder.

Thus the household is, in neither a social nor physical sense, a self-perpetuating group persisting from generation to generation, but, rather, each takes its identity from a particular dwelling and varies in membership with the changing circumstances of its leader and the cycle of growth, fission and dissolution to which his own and the families of his dependents are subject. But even as it gains or loses members, the household retains the same basic structural form. Founded by the nakura luma' and his wife, most households expand, to contain the families of those of their married sons or daughters who have not married out nor yet seceded from the group, the couple's residual family of procreation, plus possibly other persons, with or without offspring, chiefly children, grandchildren or siblings who have joined the household following the break-up of conjugal links in other domestic groups. In most families at least one or two children will marry out, and, because of differences in the age of those who remain, older children often make good their independence by the time younger brothers or sisters are beginning to marry and rear families of their own. As a result, few luma' contain more than two or three dependent families at a time. Additional persons may occasionally be incorporated in the household, or later on rejoin the group after having once relinquished membership, but its basic structural form remains the same. It is essentially that of a pyramid of interlocking conjugal families, each family or married pair typically at a different stage of maturity, with the house founder and his wife at the apex, and extending through three, occasionally four, generations each of which is linked successively by parent-child or filiative ties.

Clearly the household is not a descent group, minimal or otherwise. Although the house leader and his wife are typically its senior members, their position depends, not on descent as such, but on the leader's role as house-owner, his familial status within the group and position as its spokesman. Moreover, eligibility to household membership is established, not by successive genealogical affiliation, but primarily by means of marriage and bilateral filiation. Furthermore, neither marriage nor filiation alone automatically ascribes membership, but rather they provide the basis for claims to eligibility which must, in the case of adults, be asserted and acceded to by the house leader and be accompanied by actual residence sustained over a prolonged period of time.

(b) *Filiation*

Every Bajau Laut child is by birth a member of one particular luma' which may as equally well be the luma' of the father as that of the mother. In practice, it tends more often to be the latter, particularly if the child is the first-born. Uxorilocal residence is the norm during the first few years of marriage, or until the birth of the couple's first child. Statistically 60 per cent of all couples continue to reside uxorilocally until they eventually establish a household of their own (Sather, 1976).

However, regardless of which household a child is born into, it does not usually come to maturity in its natal luma'. Generally its parents leave the group unless they stand to inherit the original dwelling. By accompanying its parents the child relinquishes membership in its natal household and becomes a member of the newly founded household established by its parents. It is normally into this luma', or the similar group founded by its spouse's parents, that its own children are born and acquire their initial household affiliation.

By right of birth a child may belong, then, to the parental luma' of either of its parents. The choice is made by its parents, together with the heads of the respective households in which they live prior to marriage. While a degree of option is involved, once a particular residence decision is taken, it is, in Firth's terms (1957:5), *definitive*, i.e. it assigns an individual to membership in one, and only one, specific luma'. However, the choice is always *reversible* (cf. Firth, 1957:5) and an individual is never permanently bound to it, but may, and regularly does, change his group membership several times during his lifetime. The first change regularly occurs in childhood when his membership is transferred to the new household established by his parents on their secession from his natal luma'. Membership is thus acquired at birth, or is later transferred as secession occurs, by means of bilateral filiation. Following Freeman (1956:87-8; 1958:26-8) the system is more specifically one of utrolateral filiation, in that membership is established initially in *either* the husband's or wife's parental household, but *never in both*. However, the Bajau Laut system of filiation differs from that of the Iban described by Freeman in that neither of these households is ordinarily either spouse's natal luma'. This is because filiation is not only optionally reversible, but is regularly and systematically reversed in each generation. This difference in filiation is of fundamental structural importance. What it means is that household membership is transferred in every generation from an existing group to a newly founded one, with the result that, from the perspective of the original household, there is an inevitable break in filiative links between successive generations. While this break may be averted temporarily by the short-term inheritance of the household by the house founder's successor, affiliation is, nevertheless, eventually transferred to a new luma'. The difference can best be summarized by saying that the Bajau Laut system is one of *discontinuous*, as opposed to *continuous*, filiation. Thus, the luma' is a self-replicating group but, unlike the Iban *bilek* family, is never a self-perpetuating one.

All children have identical rights of membership in the luma' into which they were born or grew to maturity, except in so far as the youngest or last-born daughter, has a superior claim to succeed the house founder or his wife upon their death or retirement. The emphasis in defining these rights is on parentage and the central relationships that unite luma' members are those between parents and their children and between siblings. Collectively these persons are termed talanakan and relationships between them form the relational core, not only of the luma', but of every permanently constituted social unit in Bajau Laut society. As the household expands, successive filiative links, and their collateral extension through relations of siblingship, are temporarily incorporated in its make-up. Incorporation is relatively short-lived, however, as filiative links of membership are eventually revoked or transferred to other luma' in the ensuing process of partition and with the ultimate dissolution of the household. Relations traced maximally through three successive filiative links define, both ideally and in practice, the effective limits of eligibility to luma' membership. No one outside these limits is ever accorded full household membership with the exception of in-marrying spouses.

What needs to be stressed is that not all persons related within these limits are necessarily members of the same household or even of the same household cluster. Filiative ties establish rights of eligibility but membership of both the luma' and ba'anan additionally requires prolonged residence and acceptance of the responsibilities that membership entails. Furthermore, filiative links provide an individual with multiple and overlapping rights of possible admission to more than one set of domicile groups. Choice is made in terms of specific residence decisions, and once an individual elects, or accompanies his parents or spouse to take up residence in a particular luma' (and ba'anan), his membership is unambiguously defined, even though it may be revoked later on and transferred to another group. As a consequence, the combined outcome of numerous individual acts of choice is the emergence of concrete, relatively stable domicile groups. At the same time, the overlapping nature of these rights provides each individual with a field of potential claimants and sponsors through whom alternative lines of affiliation may be sought or accorded, as domicile groups change in personnel.

(c) *Marriage*

Residence is, therefore, of central importance in determining both household and cluster membership. Marriage is crucial in this regard since it constitutes the principal occasion on which a residence choice resulting in a change of household membership is made. By and large, filiative claims to membership are established by birth, or are transferred from one luma' to another in the process of household partition. While some additional reshuffling of personnel may occur, chiefly due to the break-up of marriage or the incompatibility of housemates, such occasions are relatively infrequent. Moreover, those who take up membership are in many cases former housemates who, in doing so, rejoin a group to which they previously belonged by right of filiation. An additional, but very infrequent form of household recruitment is by adoption. Unlike many other Borneo peoples, the Bajau Laut do not regularly practice adoption, except, as a rule, in the event of the death of a child's parents. But, when it occurs, adopted children acquire the same status in the household as natural children born into the group.

Marriage requires that one marriage partner leaves his parental luma' and takes up membership in the household of his spouse's parents or some other senior cognate. From the point of view of the household, the decision is a vital one since the group is typically founded by a couple past or near the end of their childbearing years and at least one in-marrying spouse must be added to assure the group's continuance. As a result, conflicting pressure is frequently brought to bear on newly married couples by their parents or other senior kinsmen anxious to secure their residence within their own particular domicile group. To minimize pressure, and prevent dissipation of resources among unrelated households, particularly in the form of bridewealth (*dalaham*), marriages are often arranged between children of allied families residing in the same ba'anan. Also a permanent residence choice is usually deferred for a number of years. Following a one- or two-year period of uxorilocal residence, most couples alternate for a time between the two parental households before settling permanently in one or the other luma'. Recently married couples are therefore allowed an opportunity to discover which set of housemates they find most compatible and their parents are given time to reconcile themselves to their final decision.

A first marriage is ideally arranged by the couple's parents, their related cluster elders and other senior cognates, but sometimes the union is precipitated by elopement or the girl's abduction by a young man and his friends. Later marriages are generally contracted directly by the couple themselves. The rules that apply to marriage primarily concern alliances between cognates. While non-cognates (*a'a saddi*) may marry, their union is neither frequent nor favoured, and cognatic marriage is the norm, both preferred and actual. For cognates, marriage and sexual relations are prescribed as incestuous (*sumbang*) between: siblings, both full and half; immediate patrilateral parallel cousins; and all cognates, in practice through the range of second cousins, who are not of the same generational level.

The most stringent prohibitions apply to relationships within the conjugal family and between children and parents' siblings; under no circumstances may such persons marry. Outside these limits, intergenerational unions, and marriage between patrilateral parallel cousins, may be allowed, although the latter in particular is strongly disapproved, provided ritual fines are paid to negate the spiritually deleterious consequences. The children of brothers are said to be, like full brothers and sisters, *dabohe'*, 'of one (seminal) fluid' and their union is therefore incestuous, as *anak kasumbang*, although more distant patrilateral ties are ordinarily ignored. There is also an inherent role conflict that is likely to arise in the event of their marriage, since the bride's *father's* brother is, in most cases, expected to act as her *uwakil*, or guardian, and be witness (*saksi*) to the pronouncement of the marriage formula (*batal*) and transfer of bridewealth on the occasion of her marriage.

With this exception, all other cousins of whatever degree are strongly preferred marriage partners. Approximately 80 per cent of all unions in Bangau-Bangau are between kampong (presumed or actual cognates) and nearly all of these are between *maghaki*, persons related, or presumed to be related, as cousins of some degree. First and second cousin marriage is particularly important structurally as it serves to maintain and further consolidate relations between close cognates within the category of dampalanakan. There is no marriage prohibition within either the luma' or ba'anan, provided that it is not incestuous, and while intraluma' marriage is highly infrequent, that within the ba'anan is common and often arranged by the elders (*mattoa*) of the group to prevent the attenuation of ties among their followers. While a single union may suffice, a double marriage is sometimes arranged between a son and daughter of a pair of sisters or of a brother and sister. Such double marriages not only consolidate the cognatic networks linking ba'anan members, but ensure that one couple will reside post-nuptially in each intermarrying household, and have the further advantage of requiring only a token bridewealth exchange.

Marriage is also a major means of household recruitment. Persons marrying into a household attain full rights of membership, including in the case of an in-marrying husband, the right to inherit the dwelling and succeed the original house founder. The only way in which marital rights differ from those established by filiation is that they are contingent upon the continuance of the marriage relationship.

Statistically it is more often the husband than the wife who moves at marriage. The principal reason for this is the strong pull normally exercised by mother-daughter ties and secondarily by relations between sisters. These ties are typically close and, in addition to their strong affective content, come to the fore, in particular, on the occasion of childbirth. At this time a woman's mother and sisters have customarily prescribed obligations to assist her delivery and attend her and the newborn infant during recovery. As a result of the strength of these ties, few women will consent to be removed from their parents' luma' as long as their mother is alive, or from the ba'anan in which their sisters are living, and most husbands are satisfied to leave the final residence choice to their wives. Also, ties between related women are important in that all exchange of cooking fish within domicile groups is handled by women. Consequently, their composition tends to be markedly matrilateral, and uterine ties, by and large, are the predominant genealogical relations between luma' and ba'anan members, even though they have no special jural status, as such.

The Household Cluster

Every household is aligned with one to five or six others, generally in a tightly aggregated group of pilehouses, to form a 'cluster' or ba'anan. The largest ba'anan in Bangau-Bangau contains seven luma', including that of the village headman, with a total of 101 persons; the smallest consists of only two luma' or 13 persons. Most others contain some three to five households or 25 to 50 persons.

Cluster formation is linked to the process of household partition. As a household undergoes partition, the seceding families generally build houses in a group surrounding the original dwelling. Alignment is generally maintained, at least for a time, with the cluster to which the original house founder belonged. But, if the group is large, or able to attract additional allies, fission may occur, and the group formed as a result of partition may split off, possibly bringing others with it, to form an independent cluster. The core members of most clusters tend to be related not only as close cognates and affines, but also as former housemates and the relations between house leaders on which cluster alignments are based are generally the same as those that maximally unite household members. In each generation alignments centre, in particular, on one, or possibly several, sibling sets, linked, in the latter case, by marriage or close cognation. Occasionally the siblings or parents of an in-marrying spouse may be brought into the ba'anan, but as children are born, and often as additional marriages are arranged with established members, affinal ties are converted in time to consanguineal ones, with the result that each individual's personal network of cognatic relations is densely focused and heavily interwoven within the cluster to which he or she belongs. Thus every ba'anan member, with the possible exception of in-marrying spouses, belongs to the personal kindred of every other, and the group as a whole has the nature of a dense node, or 'cluster' (Barnes 1968:118), of tightly interwoven cognatic and affinal ties.

Like the household, the cluster is not a permanently enduring group of constant membership, but undergoes repeated shifts of personnel, related ultimately to changes in the membership, and the formation and dissolution of its constituent households. While every cluster is typically organized around a core of married siblings and tends to split along sibling lines when fission occurs, affiliation of house leaders is possible on the basis of any of the same cognatic or affinal links that confer eligibility to possible household membership. As a result, the cluster similarly affords multiple lines of possible affiliation, graded as far as their likelihood of being utilized is concerned, in terms of social and genealogical closeness (*magsekot*). Its concrete composition tends to alter in each successive generation, as established households dissolve and new ones are founded, or as relations between members become attenuated or ruptured by death or enmity. Additional changes may occur as house leaders reorient themselves around the luma' of dependable allies, newly emergent sibling leaders, or men of wealth or forceful personality.

The senior house leaders and their wives generally make up an informal body of elders (mattoa) who exercise strong collective influence over their ba'anan followers, mobilise their assistance on occasions when common action or material aid is called for on a greater scale than a single household or family can supply, or when the economic or political interests of the group are challenged or in need of assertion. Assistance is called forth and rendered on the basis of personal cognatic or affinal ties. While similar ties extend outside the ba'anan, those within the group are particularly binding and the cluster constitutes a highly cohesive support group.

Conclusion

Choice, as Firth observed, is a fundamental aspect of cognatic social systems. Both at sea and in his home village, the Bajau Laut faces choice in his permanent group affiliations and in forming more ephemeral associations among his kindred or those related by local ties or convergent interests.

At sea the conjugal family head must repeatedly choose partners for voyaging or co-operative netting, and through repeated selection, a relatively stable personal roster emerges, drawn primarily from among his close collateral cognates and affines of the same village. While partnerships are recurrently brought into play, the specific need for which they exist is short-lived and intermittent, so that fleets formed on this basis are variable in composition and disband at the end of every voyage or briefer fishing venture. Moreover, the need for pooled gear or co-ordinated labour may at times surpass that which roster members alone can supply, while family crews themselves are largely interchangeable with the result that roster partnerships are periodically supplemented, or replaced, by more ephemeral, contractual alignments between family heads without regard to prior kin or village ties.

Within the village, family production is geared to a system of distribution that centres in larger, more enduring households and localized, kindred-based household clusters. Both households and clusters are cohesive support groups, represented by senior house leaders responsible for overseeing the political interests and internal domestic affairs of their dependent housemates. While house leaders are generally senior in generational terms, the strength of domicile alignments, like the strength of roster partnerships, depends upon collateral, rather than lineal relations, particularly those of siblingship. This is due to the economic nature of these groups. The prime concern is with the contribution of economically active families. Property, on the other hand, is owned in severalty by individuals and acquired separately through the efforts of single conjugal families, and never that of the household or cluster as a whole. The boats, nets and other capital assets required for fishing are within the means of most family heads and are ordinarily supplied to the husband by his father at the time of his marriage. Moreover, they are not highly durable, but require repeated replacement and repair. Similarly the major form of village investment, the pilehouse, is ultimately dismantled or abandoned, generally near the close of the home founder's active lifetime. As a result, the authority of individual house leaders rapidly declines with their advancing years, and in the absence of a possible corporate estate in which their dependents and future followers might share a continuing interest, households are dismembered and eventually dissolve.

Thus, household membership continually changes and, as old households are dismembered and new ones founded, so too does the composition of the larger village clusters. An element of choice enters as single individuals, families or entire households transfer membership from one group to another. However, choice is made, in contrast to the more ephemeral alignments at sea, in terms of affiliation in relatively enduring groups, and occurs within the circumscribed limits of eligibility defined by ties of marriage and bilateral filiation. These ties afford possible entry to more than one group, so that some must necessarily be left dormant, while others, which may for a time come into play, are later revoked. Choice itself is made by taking up actual residence within a particular household or cluster under the sponsorship, or by invitation, of a specific house leader or senior married pair. The factors determining individual choice are complex and include, in addition to the pull of kinship and marriage ties, the numerical strength, resources and solidarity of possible sponsoring groups and the quality of political or moral stewardship exercised by their senior leaders. However, individual decisions have little effect on the structural make-up of domicile groups, since choice is made within well-defined limits mirrored in the basic categories and relations defined by the kinship system, and the groups that take form as a result of many single acts of choice preserve a stable structural form, even as they undergo partition, dissolve, and are replicated.

NOTES

1. See Sather and Chua (1975). In 1974, working with Fisheries Department personnel and survey data, I estimated the number of Bajau fishermen on the east coast at 3,095, out of a total east coast fishing population of 4,780 (Sather and Chua, 1975:238). Adjusted for family dependents, roughly 16,000 persons, or a third of the Bajau population present in east coast districts, derive their major income from fishing or related marine activities. A considerable number of others engage in casual, occasional fishing. No comparable data exist for the west coast, but all available evidence suggests an even greater marine dependence.

2. The Bajau Laut system of kinship terminology is basically similar to that of other Borneo peoples.
   (a) Kin are classified by generation, and, excluding primary kin and affines, are designated by six basic terms: grandparents and collaterals of their generation (*mbo'*); parents' siblings and all collaterals of their generation (*bapa'*) male, and (*babo'*) female; cousins (*kaki*); children of siblings and cousins (*kamanakan*); own grandchildren and all children of kamanakan (*mpu*).
   Special terms exist for eldest (*anak sulung*) and youngest child (*anak kabangsuan*) and birth order is specified by numerical terms; an orphan is called anak dodos and an adopted child, *anak l'ipat*. Degrees of collaterality may be specified in the case of cousins by the use of numerical terms, *menda'dda, menduo, mentellu'*, literally 'once', 'twice', 'thrice' and so on. The terms *mbo' kokku'at* (lines

grandparents) and mbo' kengkang (toe nail grandparents) may be used to indicate generations removed from Ego for lineal great-grandparents and great-great-grandparents, respectively, and *mpu kokku'ut* and *mpu kengkeng* for the offspring and grandchildren of Ego's own mpu.

(b) Ego's primary kin are set apart by special terms: father (*mma'*); mother (*nngo'*); sibling (*dinakan*), child (*anak*).
In addition siblings may be referred to according to relative age, as siaka and siali, older and younger sibling, respectively.

(c) Kinship terminology is basically of an Eskimo type (Murdock, 1949). Outside the nuclear family, collaterals, and in the case of mbo', ascendants, and of mpu, descendants, are merged in each category as far as relationships can be traced. The term *kampong* is used for all persons to whom Ego acknowledges a cognatic tie, whether the precise genealogical nature of the tie is known or not. The category thus forms, in Freeman's sense, a 'kindred' (1961), or perhaps better, Ego's 'cognatic kin of recognition' (Peranio, 1961:95). The limits of the category are indefinite and are set by the recognition of the individual at its centre; those outside are negatively described as 'other people' (a'a saddi).
The term kampong is rarely used for close personal kindred within the range of first cousins; instead, such persons are referred to as *dampalanakan* or *dampo'un*. Ego's dampalanakan comprise a bounded subset of cognates, and, although there is some variation in individual usage, the category refers essentially to an Ego-centred network composed of the members of the two stocks formed by an individual's lineal grandparents. By stock I mean 'all the descendants of a man and his wife counting descent through females as well as males' (Radcliffe Brown, 1950:22). The dampalanakan is thus a bounded category or network circumscribed by reference to a set of truncal ancestors of a defining Ego, and is socially significant as defining Ego's 'close kindred' and those cognates maximally eligible for membership in his household. Within the dampalanakan primary kin are set apart terminologically, whether they live together in the same domestic family unit or not, and are referred to as *talanakan*. Talanakan is a centrally important kinship category, as talanakan relations constitute the recruitment core of all permanently constituted social groupings in Bajau Laut society (cf. Sather, 1971:267ff).

(d) Affinal relatives are consistently distinguished terminologically from consanguineal kin, and the principal affinal terms are seven in number: parents-in-law (*mato'a*); siblings-in-law (*ipal*); spouses of siblings (*blias*); child-in-law (*ayuwan*); husband (*helia*); wife (*handa'*); co-parents-in-law (*ba'i*).

Affinal terms, except for those used between spouses and between their parents (ba'i), are regularly extended to spouse's relatives. Thus, all cognates of Ego's spouse in the first, second, or further ascending generation, regardless of their sex or degree of collaterality, are referred to as mato'a. Wherever possible, however, such persons are included in an appropriate category of cognatic kin.

Given the preference for endogamous marriage between cognates of the same generation, this is frequently possible, and keeps the number of affinal relations recognized by most persons to a minimum. A descriptive marker, *tili*, is used to designate step-relationships, e.g. *anak tili*, step-child.

(e) Terms of address are limited and reflect generation, relative age and respect: grandparents and elders generally (*mbo'*); father (*mma'*); mother (*nngo'*); parents-in-law (*mato'a*); parents' siblings (*si'li*), eldest brother or eldest son (*oto'*); eldest sister or eldest daughter (*arung*).

In general, the members of senior generations, including parents-in-law, should not, out of respect, be addressed by personal names. However, there are no formal speech or name avoidances. The position of those addressed as oto' and arung is especially important, as upon the death or senility of one or both parents, they are expected to assume responsibility for the well-being of their younger brothers and sisters.

3. Evers (1969:120ff) has discussed the failure of anthropologists to deal with the presence of the extended family as an alternative form of household unit in lowland Thai society. A similar point might be made with regard to bilateral societies generally. His argument is that the conceptual assumptions of the discipline, particularly with regard to the 'loosely structured' nature of Thai society, has caused them to ignore the not infrequent existence of corporate domestic groups larger than the nuclear family in an otherwise fully bilateral social system.

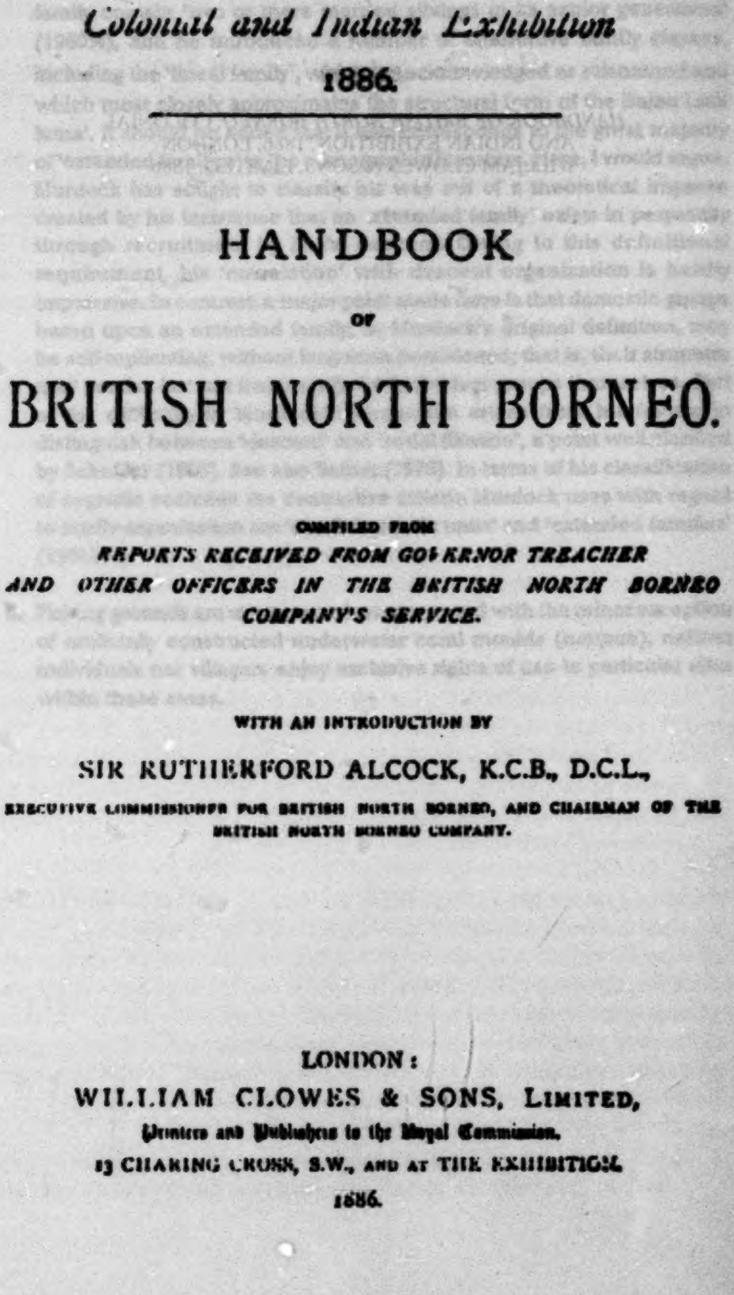
4. In this paper I follow Murdock's original definition of an 'extended family' (1949). In 1960 Murdock altered his definition to require that an extended

family contain 'two or more married siblings in its senior generation' (1960:4), and he introduced a number of alternative family classes, including the 'lineal family', which he acknowledged as misnamed and which most closely approximates the structural form of the Bajau Laut luma'. It should be added that it also corresponds to the great majority of 'extended families' in the ethnographic literature. Here, I would argue, Murdock has sought to classify his way out of a theoretical impasse created by his insistence that an 'extended family' exists in perpetuity through recruitment by lineal descent. Owing to this definitional requirement, his 'correlation' with descent organization is hardly impressive. In contrast, a major point made here is that domestic groups based upon an extended family, by Murdock's original definition, may be self-replicating, without long-term persistence; that is, their structure may persist, but not necessarily the individual groups themselves. Part of the difficulty in Murdock's discussion arises from his failure to distinguish between 'descent' and 'social filiation', a point well clarified by Scheffler (1966). See also Sather (1976). In terms of his classification of cognatic societies the contrastive criteria Murdock uses with regard to family organization are 'small domestic units' and 'extended families' (1960:14).

5. Fishing grounds are an unowned resource, and with the minor exception of artificially constructed underwater coral moulds (*tumpuk*), neither individuals nor villagers enjoy exclusive rights of use to particular sites within these areas.

Annex 10

HANDBOOK OF BRITISH NORTH BORNEO, COLONIAL AND INDIAN EXHIBITION, 1886, LONDON: WILLIAM CLOWES & SONS, LIMITED, 1886



Colonial and Indian Exhibition

1886.

HANDBOOK

OF

BRITISH NORTH BORNEO.

COMPILED FROM

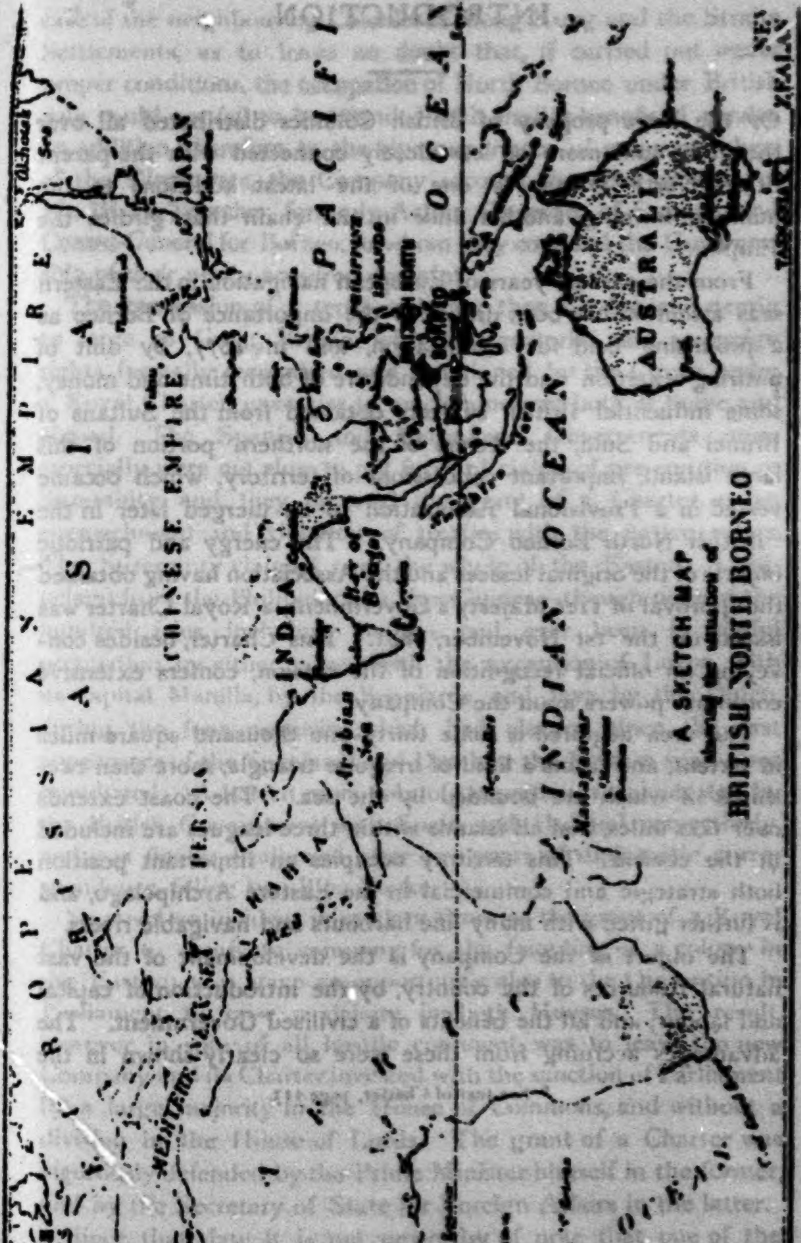
REPORTS RECEIVED FROM GOVERNOR TREACHER
AND OTHER OFFICERS IN THE BRITISH NORTH BORNEO
COMPANY'S SERVICE.

WITH AN INTRODUCTION BY

SIR RUTHERFORD ALCOCK, K.C.B., D.C.L.,

EXECUTIVE COMMISSIONER FOR BRITISH NORTH BORNEO, AND CHAIRMAN OF THE
BRITISH NORTH BORNEO COMPANY.

LONDON:
WILLIAM CLOWES & SONS, LIMITED,
Printers and Publishers to the Royal Commission.
13 CHARING CROSS, S.W., AND AT THE EXHIBITION.
1886.



A SKETCH MAP
showing the situation of
BRITISH NORTH BORNEO

EUROPE
RUSSIAN EMPIRE
ASIA
BRITISH ISLES
MEDITERRANEAN SEA
PERSIA
ARABIA
Red Sea
Arabian Sea
INDIA
Bay of Bengal
CHINESE EMPIRE
JAPAN
PHILIPPINE ISLANDS
BRITISH NORTH BORNEO
PACIFIC OCEAN
INDIAN OCEAN
Madagascar
AFRICA
ATLANTIC OCEAN
AUSTRALIA
NEW ZEALAND
TASMANIA

INTRODUCTION.

OF the large progeny of British Colonies distributed all over the globe and more or less closely connected with the parent State, North Borneo is one of the latest additions to the number, forming another link in the chain that girdles the Empire.

From the earliest years of European navigation in the Eastern seas attention has been drawn to the importance of Borneo as a promising field for colonization, and in 1877, by dint of untiring exertion and the expenditure of both time and money, some influential British subjects obtained from the Sultans of Brunei and Sulu, the Rulers of the northern portion of this large island, important concessions of territory, which became vested in a Provisional Association to be merged later in the "British North Borneo Company." The energy and patriotic objects of the original lessees and the Association having obtained the approval of Her Majesty's Government, a Royal Charter was issued on the 1st November, 1881. This Charter, besides conveying an official recognition of the cession, confers extensive corporate powers upon the Company.

The area acquired is some thirty-one thousand square miles in extent, and forms a kind of irregular triangle, more than two-thirds of which are bounded by the sea. The coast extends over 600 miles, and all islands within three leagues are included in the cession. This territory occupies an important position both strategic and commercial in the Eastern Archipelago, and is further gifted with many fine harbours and navigable rivers.

The object of the Company is the development of the vast natural resources of the country, by the introduction of capital and labour, and all the benefits of a civilised Government. The advantages accruing from these were so clearly shown in the

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* See text of Charter, page 113.

case of the neighbouring Colonies of Hong Kong and the Straits Settlements, as to leave no doubt that, if carried out under proper conditions, the occupation of North Borneo under British rule could not fail to be attended with similar beneficial results. In addition, therefore, to the ripe experience of many members of the Directorate, the Company secured the able services of Mr. W. H. Treacher, formerly Acting Governor of Labuan, and Consul-General for Borneo, to whom they confided the Governorship of their newly-acquired domain.

The concession of a territory larger than Ceylon and nearly as large as Great Britain, with all territorial and sovereign rights, formally recognised and sanctioned by the Crown under a Royal Charter, gave rise to much comment both at home and abroad. The Spanish and Netherland Governments more especially were not slow to put forward claims of pre-emption or Suzerainty, and they opposed the grant of a Charter as an encroachment and violation of treaties with the native rulers. The Suzerainty claimed over the whole of the Eastern Archipelago from the Philippines to New Guinea—though none of the hundred isles, including Borneo, had ever been in useful occupation by either power, with the exception of Luzon, with its capital Manilla, by the Spaniards, and Java by the Dutch, during the four centuries which had elapsed since the first appearance of the Spaniards and Dutch in the Eastern seas—was repudiated. A barren monopoly of possession was contested by the British Government with Spain and Holland respectively, and was finally disallowed after two years of diplomatic correspondence, filling two Blue Books.

So novel an incident in modern times as the grant of a Royal Charter to a private company for the founding of a colony in the Eastern seas, gave an opportunity also to the Opposition in Parliament to raise a debate in both Houses. The result, however, in spite of all hostile comment, was to leave the new Company and its Charter invested with the sanction of Parliament by a large majority in the House of Commons, and without a division in the House of Lords. The grant of a Charter was vigorously defended by the Prime Minister himself in the former, and by the Secretary of State for Foreign Affairs in the latter.

Since that date it is not unworthy of note that one of the greatest and far-seeing of the statesmen of the present day—the

German Chancellor Bismarck—when carrying out his newly developed designs for the extension of colonial interests under the Empire, adopted exactly the same course as our Government, by granting a Charter to Companies willing to engage in such enterprises—in the Cameroons, in Eastern Africa, and in New Guinea. But, bolder than our own Government, or less careful perhaps to avoid responsibility, the German Chancellor proclaimed a Protectorate over each territory, conferring an additional prestige with the natives as well as security against aggression from without, a course which has not yet been adopted by the British Government, but may probably be followed in regard to North Borneo at no distant date, on the precedent of New Guinea and the Lower Niger.

It was easy to demonstrate that the objects of the Company were unexceptionable, and deserving of encouragement, as calculated to prove of national benefit. These objects were, moreover, in strict accordance with the Treaty entered into by the British Government with the Sultan of Borneo in 1847, wherein it is recited that the desire of the Queen was "to encourage commerce between Her Majesty's subjects and the subjects of the independent rulers of the Eastern seas, and to put an end to piracies which have hitherto obstructed that commerce."

A small additional effort in this direction was made by Her Majesty's Government when this Treaty was negotiated, by the cession of Labuan, an island on the western coast of Borneo, supposed to be important as a naval station, with its harbour and reputed coal mines. It was accordingly made a British Crown Colony, with a Governor and other officers for effective administration. And although it has not realized the expectations formed, and has only been a tax on the Imperial Revenue until quite lately, the desire to possess such a station in this direction was no doubt fully justified.

The first bold conception of a plan (somewhat akin to that carried out by the late Sir James Brooke forty years before in Sarawak) to obtain by peaceable and legal means the possession of a territory of some 31,000 square miles, and develop its resources under equitable rule, was based on a sound estimate of the value and importance in the national interests of such an acquisition by British subjects. The earliest Dutch and British navigators all saw a splendid property in Borneo; and so far back as the reign of

Queen Elizabeth companies of mercantile adventurers were largely and successfully engaged in preventing the total monopoly of the rich trade of the Eastern Archipelago by Portugal, Spain, and Holland. These powers had in succession claimed the territory in all the islands of the Archipelago and the Straits, including Malacca. And in 1602 the States-General of the Netherlands, in pursuance of a monopolising policy, consolidated their various companies and created the "Netherlands and East India Company," the first great joint-stock company whose shares were sold from hand to hand, which proved to be the turning-point in the commerce of Europe. It was the Spices of the Moluccas, especially the nutmegs and mace, the taste for which had rapidly spread in the middle ages throughout Europe, that wrought this revolution. A spice trade, more than any other, was the great prize for which the Dutch did battle, and in the end drove the Portuguese quite out of the field.

The English were slow, as is their habit, to follow the example of their commercial rivals. Nor did they take any serious action in this direction until moved by a purely accidental circumstance, the wreck of a Portuguese Indiaman on our coast, called the "*Mother of God*," which attracted public attention. This vessel was a ship of 1,600 tons, and on being towed into Dartmouth was found to contain a cargo of Eastern produce worth £150,000. It was only then that it seems to have been seriously contemplated to compete with the Dutch, and begin an Eastern trade of our own, instead of trusting for the supply of Eastern produce to an annual shipment from Venice. The merchants of London, Bristol, Plymouth, and other trading ports then combined to contest with the Dutch the monopoly they enjoyed. The whole commerce of the East at this date was fast drifting into their hands as it slipped from the nerveless grasp of Portugal under the baneful rule of Spain. Together these two countries, under one rule, still retained indeed all the most advantageous positions in the Eastern seas, and it was no light matter therefore to dispute with them and the Dutch so profitable a trade. Nothing daunted, however, a Company was formed, and on the last day of the 16th century Queen Elizabeth granted a charter to George, Earl of Cumberland, and 215 knights, aldermen, and merchants, that, "at their own cost and charges," they might set forth on one or more voyages to the East Indies, and be one body politic and corporate, by the name of the "Governor and Company of Merchants of London trading with the East Indies." We cannot follow here the early operations of this great Company, destined to found an Eastern Empire, which placed an Imperial diadem on the brow of another Queen, our present gracious Sovereign. The voyage of Captain Lancaster and the establishment of British factories at Acheen and Bantam were the first fruits. The despatch of five ships laden with merchandise under his command in 1601 was a very risky venture, since they embarked in it £70,000, a large proportion of their whole capital, and sent it forth to encounter many perils both by sea and land. Enemies' ships, armed to prevent all such intruders, swarmed on all the coasts and over the whole route. It was crowned with success, however, commensurate with the boldness of the venture, and Lancaster and his ships returned in safety with freights of great value, after visiting Sumatra and Java, and establishing factories there. One can only feel regret that Elizabeth, who gave the Charter to the East India Company, did not live to see even this the earliest result of individual effort and courage which she had encouraged by her patronage. For it has been truly remarked that the mercantile enterprise of those remote times, which effected such great results, was for the most part the work of individuals, either acting singly, or associated in mercantile companies, at their "own cost and charges," as Queen Elizabeth, with characteristic caution, was careful to stipulate. In this, however, she was not singular, for neither the British Crown nor the other Governments of Europe had much to say in the matter, but left their subjects to fight their way as they best could, in the midst of adverse elements alike in the Spanish Main and the Eastern seas,—with their own resources and at their own cost and peril.

Governments in those days were content to reap all the benefits that might accrue and a large share of the profits, without engaging either themselves or the nations they governed in any direct responsibility in the event of failure or loss. The annual profits of the King of Portugal, as an example, from the spice trade alone, were estimated in 1529 at a sum of 200,000 ducats, an enormous sum at that date. And yet it was due mainly to the individual influence of Prince Henry of Portugal, that Vasco da Gama was enabled to make his great voyage round the Cape which opened India to the Western Powers. And it has been cited as a curious fact in the world's history that it was the search for spice-growing countries which led to the first circumnavigation of the globe, as it led also to the discovery of another passage into the Eastern seas from the Western hemisphere, by the Magellan Straits and the Philippines, in a voyage under the ill-fated *Magellan* in the year 1521.

Borneo, which forms the centre and largest of the whole group of islands stretching from the Philippines to Australia, "fragments of a continent," as Wallace described them in his work on the Malay Archipelago, abounds in sources of wealth to this day, only requiring development by cultivation of the soil and capital under an equitable and civilised government. Both are essential requirements, and these it is the mission of the British North Borneo Company to supply. North Borneo, moreover, has this special and exceptional advantage, that while the native population is small and easily governed, there is a command of Asiatic labour, fitted to the climate, in the overflowing population of China within five days' steam. The Chinese are a race which has already fertilised, by industry and persevering labour, nearly all the islands and colonies east of the Cape, and still affords an inexhaustible reserve of labour wherever in these seas the workers can count upon fair wages and security for the fruit of their labour. This is an inestimable advantage for Borneo, where, under a tropical sun, it is impossible for Europeans to undertake the labours of the field, and who are not therefore, as are the planters in the West Indies, reduced to great straits from the difficulty of securing continuous labour at reasonable wages. Nor is it a less important and exceptional advantage for North Borneo that it is out of the region of typhoons and the earthquakes and volcanoes which periodically work such havoc and ruin in the Spanish settlements of the Philippines, and the Dutch possessions in Java and Sumatra further south.

The commercial and strategic value of North Borneo very early attracted the attention of the East India Company. Many of the islands from Manilla to Java, forming the Borneo group, with their tropic fertility and valuable products, possessed an amount of trade and prosperity which could not fail to attract attention, in the 16th century, before the withering hands of Spain and Holland were stretched over them. A prosperity of which, it is said to reflect, there is now no trace. Our early navigators leave no doubt on this subject. Captain Daniel Blackman, in 1714, relating his voyage to Borneo, alludes to a considerable trade with China; and Mr. J. Hunt, in a Report to Sir Stamford Raffles in 1812, says that "when the Portuguese first visited Borneo in 1520 the whole island was in a most flourishing state. The numbers of Chinese that settled on her shores were immense; the products of their industry and an extensive commerce with China in junks gave her land and cities a far different aspect from her appearance at this day, and their princes and courts exhibited a splendour and displayed a magnificence which has long since vanished."

This is further borne out by Piggafetta, who spoke of the town of Brunei having 25,000 houses, and being rich and populous. In 1809 there were not 3,000 houses left, nor 6,000 Chinese in the place, and not a junk had for years been seen in Bornean waters.

Mr. Hunt attributes this decay of commerce and prosperity to the direct action and mistaken policy of the Portuguese first, and subsequently of the Dutch. Mistress of the Eastern seas, as the latter became, we are told they exacted "by treaties and other ways the Malay produce at their own rates, and were consequently enabled to undersell the junks in China. But these Powers went further; by settling at ports in Borneo, or by their Guarda de Costa, they compelled the ports of Borneo to send their produce calculated for the China markets to Malacca and Batavia, which arbitrary and short-sighted proceeding at length completely cut up the direct trade by means of the China junks. The Rajahs finding their revenues reduced, turned their attention from trade and commerce to piratical enterprise. Agriculture was neglected, and lands hitherto cultivated were allowed to run to jungle and to waste." A result so obvious and inevitable that, if their own exclusive profit and not the destruction of prosperous communities was the object of the Portuguese or Dutch, it indicates a degree of judicial blindness as fatal to nations as to individuals. It was clearly suicidal, and they only reaped a fitting reward of their own flagitious acts. Mr. Hunt remarks too in his Report,—"that the English were not insensible to the value and importance of the once valuable commerce of Borneo, may be inferred from the efforts they repeatedly made to establish themselves on its shores. There still exist the remains of a British factory in Borneo proper. Before the year 1706, they had made two successive attempts to fortify themselves at Benjarmasing, and twice they have attempted an establishment on the sickly island of Balambangan (lying north of Borneo near Marudu Bay), and in 1775 the Honourable Company's ship *Bridgewater* was sent to Pasir with similar views."

Mr. Hunt concludes his report, in 1812, hoping that Borneo as well as Java would be retained by the British Government, in the following words: "In looking over the map of the world it is a melancholy reflection that so large a portion of the habitable globe as all Borneo is abandoned to barbarism and desolation." And he trusted "that another age may not be suffered to pass away without exhibiting something consolatory to the State, the Philosopher and the Philanthropist."—A hope disappointed in the sequel, but one which yet may be realised in this generation, for such is the desire and aim of the British North Borneo Company.

The Indian Press, since the grant of the Charter, has spoken in the same sense. The *Bombay Chronicle* remarked: "The date of the Royal Charter for the incorporation of the North Borneo Company we hold to be a new era in the history of the progress of civilisation and commerce, and tending to the benefit of the world at large, since the island, which is inexhaustible in mineral and vegetable resources, has as yet remained a stranger to the enterprise of the merchant and the man of science. In the intimate connection of Great Britain with the island of Borneo, India will find before long a fertile source of enhancing the prosperity of her people."

So we trust both India and Great Britain may find in this sanguine anticipation of the Indian Press a true forecast of a near future in the development of the Colony and the resources of the territory of British North Borneo.

The recent aspirations of the chief Continental powers—notably France and Germany—for Colonial expansion, and the numerous annexations made in furtherance of this object in Africa, in the Pacific, and the Eastern seas, are facts which give increased importance to the acquisition of North Borneo by a British Company, secured, as it is, by a Royal Charter and the British flag from all aggression or encroachment on the part of any alien or foreign power. From its central position, moreover, it possesses advantages both political and strategical, which no other island in the Eastern Archipelago presents, and, under existing circumstances, its value in a national no less than a commercial point of view cannot well be over-estimated.

Its past history bears this out, as shown above, when a flourishing trade with China and the adjoining archipelago, and a large and industrious population existed, before the advent of Portuguese, Dutch, and Spaniards in these regions. The discoveries of Bernardo Dias and the voyage of Vasco da Gama round the Cape opened the way to India and China by sea, with fatal effects to native industry. The ruthless policy of all the first settlers in the Eastern Archipelago, among islands so rich and populated, destroyed all security for life or property to the natives. With this loss of security their commercial and agricultural prosperity rapidly disappeared, and Borneo was reduced, in common with many other most productive and flourishing islands, to a wilderness, and the inhabitants converted into pirates and head-hunters, driven from the more peaceable and productive pursuits of agriculture and commerce.

Much of the fine territory of Borneo, rich in all natural products, with ranges of mountains to vary the tropic climate, and numerous rivers to afford cheap and easy means of transport from the interior, has thus remained for three centuries in a state of abandonment and jungle, and with a very scanty population. It came into the possession of the original grantees in 1877 in this state, and was transferred to the present Company only in 1882. What progress has been made in this short period, in efforts to introduce civil government in harmony with British laws, and to develop all the latent resources of the country, can only be imperfectly estimated by the products now shown in this Exhibition.

Time was wanting to enable the resident officials to make a complete or exhaustive exhibit of the natural products spread over so large an area, much of which has not yet been fully explored or settled. Nevertheless, great exertions have been made to bring together, on a very short notice, as many of these products as may chiefly be counted upon in the near future, to furnish the staples of a considerable trade, and offer sufficient inducements to merchants and planters to contribute in promoting so good a work. Already two companies have been actively engaged in the cultivation of tobacco; while the returns of trade* in the brief period of five years suffice to show a rapid and considerable progress.

If these may be looked upon as small beginnings, compared with the extent and value of British trade in the China Seas alone, it must be remembered how small and unpromising, as well as insignificant, were the two settlements of Hong Kong and Singapore in their first years, though now forming the great central depots of a trade which takes the whole world in its circuit. Not forty years ago, Hong Kong—as the writer remembers it—was a barren island, a bare rock, with only a few fishermen for its inhabitants. At the present day there is a large city with a population of more than 120,000 Chinese domiciled in the island, while ships crowd its capacious harbour under every flag which flies in the two hemispheres. A similar history has marked the development of Singapore and the Straits Settlements. These have only risen to their present state of wealth and prosperity within the last century, and Singapore still more recently. In 1880 the value of the united exports and imports of Singapore amounted to £25,740,174, due mainly to three great factors—geographical situation, an equitable Government, and a plentiful supply of cheap labour in the Chinese colonists. With similar, if not equal advantages, there is reasonable ground to hope that a like future may be in store for the Company's territory. Nor does such a result concern the Colony and the Company alone. Shut out, as English goods are, from all the continental States by protective duties, Europe is daily becoming of less value to us as an outlet for our manufactures. Not only are our goods excluded by hostile tariffs, but we are further debarred from the sale of our goods in European markets by the growing progress of the industries of those countries, protected as they are by bounties, the longer hours of labour, and the lower wages prevailing there. Hence, in view of the present economic condition, and the future prospects of our country, the chief hope of an improved state of trade lies in the opening and development of new markets in less civilised countries and in semi-barbarous regions. The markets of the East are still open where Russian tariffs do not exist, and no prohibitive or hostile duties are likely to be permitted under native rule. We should not be slow therefore to profit by this condition, seeing that England can only prosper, or continue to live industrially, by a vigorous policy steadily persevered in, for the extension and protection of the markets yet open in the East to her industries, or only awaiting development and English enterprise to make them thriving marts to the mutual advantage of natives and British alike.

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* See tables in Appendix.

It is in furtherance of such a policy and the advancement of these national objects of highest importance that this infant Colony is now, for the first time, brought in line with the other colonies of Great Britain, by the appearance in the Colonial and Indian Exhibition of some of its chief products. And however modest the contribution, it is hoped the chief exhibits will be found to give promise at no distant date of considerable mercantile value, and serve to draw public attention to their prospective importance and the facilities for a rapid development of trade.

CHAPTER I.—MODERN HISTORY.

THE modern history of North Borneo may be said to commence with the signing of the Treaty between Great Britain and the Government of Brunei on the 27th of May, 1847, by which the cession to the British Government of the island of Labuan, made in 1845, was confirmed and that island was thereupon created a British Colony, and a Consul-General was appointed to Brunei.

It was hoped that the opening of a free port at Labuan under the English flag would ultimately develop the rich resources of Northern Borneo, and that the example of good government might spread its influence to the mainland.

Such, however, did not prove to be the case, and the Brunei Government, freed by the prestige of the British flag from the necessity of guarding against the incursions of the Sulu and Illanun pirates, sank lower and lower in administrative weakness and corruption. Its power soon became practically limited to the districts in the immediate vicinity of the capital, though nominally the Sultan's authority extended as far as the western shores of Marudu Bay,—whence to the Sibuku river the Suzerainty of the Sulu Sultan was recognised in an equally nominal manner.

The United States was the only other Power which followed the example of England and entered into a treaty with the Sultan of Brunei, and appointed a Consul. In 1865 this Consul procured for himself from the Sultan a cession of territory, including most of the Provinces now embraced in the territory of British North Borneo, with rights of government. These rights and cessions he transferred to the American Trading Company of Borneo, which proceeded to form a settlement on the Kimanis river, some 60 miles from Labuan. The Company's capital proving quite inadequate for the purpose, the settlement was soon abandoned, and no further action was taken until 1875, when, it having been ascertained that the American cessions were still recognised as valid by the Native Government, Mr. Alfred Dent became specially interested in these cessions, and formed a private Association, in which, on the 29th of December, 1877, the Brunei Court vested in perpetuity the government of that portion of Northern Borneo which extends from the River Kimanis on the west to Sibuku on the east,—with the exception of a few small rivers, the private property of independent chiefs,—the Association undertaking to pay an annual tribute of $15,000, subsequently reduced to $7500 by mutual agreement.

As stated above, the Sultan of Sulu made claim to rights of sovereignty over much of the country which had been ceded by Brunei, and on the 22nd January, 1878, he transferred all his rights to the Association for an annual payment of $5000, and in the same year the Association, flying the flag of the house of Alfred Dent and Company, established stations at Sandakan, Tampassuk, and Papar; W. B. Pryer, W. Pretyman, and H. L. Leicester being the pioneer officers of the newly-established Government.

After visiting North Borneo in person, Mr. Alfred Dent returned to England, and considerable interest was soon evinced in the novel venture, notably by Sir Rutherford Alcock, K.C.B., Admiral the Hon. Sir Henry Keppel, G.C.B. (who years previously had materially assisted in consolidating the power of the Brooke dynasty in Sarawak), Admiral R. C. Mayne, C.B., the Hon. W. H. Read, M.L.C., of the Straits Settlements, and Mr. R. B. Martin, M.P. Early in 1881 the British North Borneo Provisional Association, Limited, was formed, taking over the cession with all rights and properties. And after much correspondence with the English Government, and considerable opposition from Spain and Holland, a Royal Charter incorporating the British North Borneo Company was obtained, which received the assent of Her Majesty Queen Victoria, under the Great Seal, on the 1st of November, 1881.

The Charter, a copy of which is appended, authorised the

Company, *inter alia*, to acquire from the then holders the rights ceded by the Sultans of Brunei and Sulu, binding them to fulfil the promises of payment and other promises contained in the original grants. It directs that the Company shall always remain British in character and domicile, and that no transfer of its powers or interests can be made without the consent of the British Government. The English Secretary of State, "if he is willing," is to undertake the decision of any differences which may arise between the Company and either Sultan, and the dealings of the Company with foreign States is subject to the control of the British Government. The Company is to use its best endeavours to "discourage and, as far as may be practicable, abolish by degrees any system of domestic servitude existing" in the country, and no foreigners are to be allowed to own slaves of any kind in the Territory. The religions of the inhabitants are to be respected, and careful regard is to be had to the customs and laws of the various tribes, especially as regards questions relating to landed property, marriage, divorce, and other rights of property and personal rights, and the Secretary of State can, if he sees fit, make suggestions as to the general treatment of the inhabitants, which suggestions the Company are bound to adopt. Her Majesty reserves the right, "in case at any time we think fit," to provide for the exercise of her extra territorial jurisdiction under the Treaty with Brunei, in which case the Company whose officers would be appointed to discharge the judicial and other functions in Her Majesty's name would bear all expenses of the exercise of such jurisdiction.

Up to the present, however, Her Majesty has waived her extra-territorial jurisdiction over British subjects and in mixed cases in North Borneo.

The appointment of the Company's Governor in Borneo is subject to the Secretary of State's approval, and the distinctive flag, "indicating the British character of the Company," is to be such as may from time to time be approved by the Secretary of State and the Admiralty.

The flags so approved are the Union Jack "defaced" with a lion passant in the centre, and the British blue and red ensigns with the lion in the fly. The Governor uses when afloat, a distinctive personal yellow flag with the lion in the centre. Section 15 contains seventeen clauses defining the general powers of the Company, such as the right to acquire further cessions of territory; to settle and promote immigration into the country; to make grants of land and exclusive or other concessions of mining, forestal and other rights therein; to farm out the right to sell spirits, tobacco, opium, salt, or other commodities; to deal in merchandise; to establish agencies in British colonies and possessions; to sue and be sued in British or foreign courts by the Company's name of incorporation; and to take and hold messuages and heraditaments in England and British possessions generally. Section 17 provides that there shall be no general monopoly of trade, and that, subject to Customs duties for revenue purposes, trade with the Company's territories shall be free.

The position and status of the Company has recently been defined by the Secretary of State for the Colonies, to the effect that "the British North Borneo Company are in the position of the administrators of a foreign State," so that, to take for instance a question of extradition, the Company would ask for the extradition of a fugitive criminal, not to themselves as a company, but to the foreign State whose territories they administer.

Since the granting of the Charter, the Company have acquired the Putatan River (1st May, 1884), for the annual payment of $1000; the Padas District (November, 1884), including the important rivers of Padas and Kalias, the Tawaran and Bangawan rivers being included in the same deed of cession, under which an annual tribute of $3000 is payable; the Kawang River (21st February, 1885), and the Mantanani Islands (10th April, 1885), for which a lump sum of $1300 and $350 respectively were paid.

It may be remarked in passing, that the Putatan and Padas cessions have already proved valuable acquisitions, the latter, under the name of Province Dent, having been the first to equalise its revenue and expenditure, including cost of police and cession money, and this, too, in the first year of its occupation, and notwithstanding the strenuous opposition of a disappointed chief backed by certain influences of foreign origin.

The Spanish Government, at the outset, strongly objected to the cessions made by the Sultan of Sulu on the grounds that the territories in question had long ago been ceded to the Spanish Crown, which claimed the suzerainty over the whole Sulu Archipelago and the States thereto tributary. This contention was finally waived on the signing of the Protocol by the Representatives of Great Britain, Spain, and Germany on the 7th March, 1885, Article III. of which provides that: "The Spanish Government renounces, as far as regards the British Government, all claims of sovereignty over the territories of the Continent of Borneo, which belong, or which have belonged in the past to the Sultan of Sulu, and which comprise the neighbouring islands of Balambangan, Banguey, and Malawalli, as well as all those comprised within a zone of three maritime leagues from the coast, and which form part of the territories administered by the Company styled the "British North Borneo Company."

The Netherlands Government also raised objections to the establishment of the Company's Government in Borneo, on two grounds: Firstly, that the fact of the Company being British, constituted indirectly a breach of the provisions of the Treaty of London of 1824, to the effect that a mixed occupation by England and the Netherlands of any islands in the Indian Archipelago is to be avoided. Secondly, that the Sibuku River is included in the cession from Sulu, whereas the Dutch claim that their boundary extends to the north of that river, as far as Batu Tinagat.

The first objection has been withdrawn, but the second still remains under the consideration of the British and Netherlands Governments. In the meantime, the Company, on the 7th September, 1883, hoisted their flag on the south bank of the Sibuku, while the Dutch have erected an obelisk on Batu Tinagat, and keep a gunboat stationed at the Tawau river.

The Government of Sarawak from the first took up a bitterly hostile position towards the newly inaugurated State, Rajah Brooke informing his Council on the 24th April, 1878, that he should take measures to caution the inhabitants to defend themselves if they did not wish to receive strange owners into their country; and he personally visited Pangeran Koup, the chief of the Bajows, a tribe the most difficult to manage in the territory. It is hoped that time or other means will be found to neutralise His Highness's hostility towards a Company which has already done so much to ameliorate the condition of the inhabitants, and with whose dealings he has no right of interference.

The interest of the American Government was also excited in the cessions acquired by Mr. Dent, and Commodore Schufeldt was, in 1878, ordered to Brunei to report thereon, and to discover what American interests were represented in that part of the world. He was able to report that he could discover no American interests, "neither white nor black."

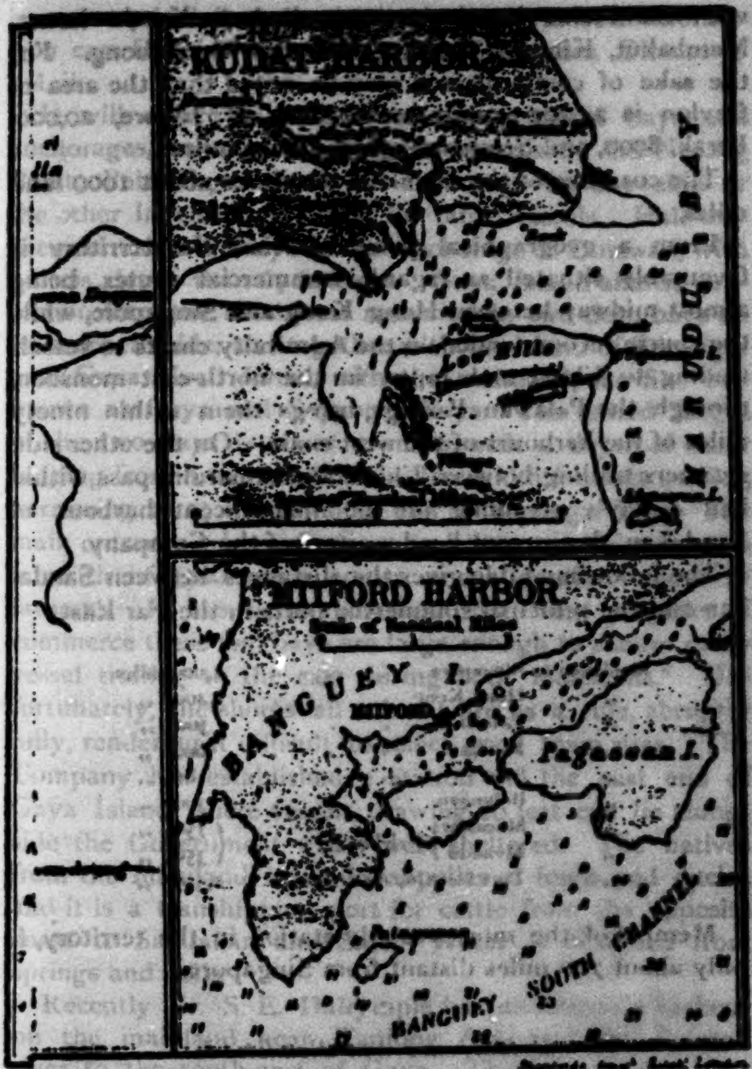
CHAPTER II.—GEOGRAPHY.

A. *Extent, Boundaries, Etc.*

THE territory of British North Borneo includes the whole northern portion of the great island of Borneo, from the Sipitong stream on the west to the Sibuku river on the east, and is coterminous with the northern boundary of the Sultanate of Brunei, on the west coast, and approaches that of the Netherlands possessions on the east. It is, roughly speaking, of pyramidal form, the apex being towards the north, the China Sea washing its western, and the Sulu and Celebes Seas its eastern coasts.

The Sibuku boundary is in about lat. 4° 05′ N., the Sipitong boundary in lat 5° 06′ N., while the boundary extends to the north as far as lat. 7° 25′ N. Gura Peak, in lat. N. 3° 52′, is taken to be its extreme south limit inland. The most westerly point is that of Kalias, long. 115° 20′ E., and the most easterly, Hog Point, 119° 16′ E. Its area, exclusive of islands, is computed at 30,403·87, and with the islands 31,000 square miles.

The government of a few small rivers, owned by independent chiefs on the west coast, aggregating 107 square miles in extent, has not yet been acquired by the Company,


KUDAT HARBOR
Low Hills
Village
MARUDU BAY
MITFORD HARBOR
Scale of Nautical Miles
BANGUEY I.
MITFORD
Pagassan I.
BANGUEY SOUTH CHANNEL

Stanford's Geog' Estab', London.

viz.: the Padas Damit (or lesser Padas), Kwala Lama, Membakut, Kinarut, Inanam, and the Menkabong. For the sake of comparison it may be noted that the area of Ceylon is 24,702 square miles, that of Johore, 20,000, Perak, 8000, and Selangore, 5000 square miles.

The coastline of the mainland measures about 1000 land miles.

From a geographical point of view the territory is favourably situated as regards commercial routes, being almost midway between Hong Kong and Singapore, while the course recommended on the Admiralty charts to vessels trading to China and Japan in the north-east monsoon, through the Palawan Passage, brings them within ninety miles of the harbours of the west coast. On the other side steamers trading between China and Australia pass within half a day's steaming of the magnificent harbour of Sandakan, the present headquarters of the Company.

The following table gives the distances between Sandakan and the principal commercial ports in the Far East:

Sandakan to	Singapore	1,000	miles.
"	Hong Kong	1,200	"
"	Labuan	300	"
"	Manila	600	"
"	Sulu	181	"
"	Bulungan	300	"
"	Macassar } Celebes	750	"
"	Menado	350	"
"	Port Darwin, Australia	1,500	"

Mempakol, the most westerly station in the territory, is only about 700 miles distant from Singapore.

II. *Harbours and Roadsteads.*

As a whole, the island of Borneo, as pointed out by Wallace, is very little indented with bays: "The few it possesses being towards the north-eastern extremity, where the coast is somewhat higher and more abrupt." On the other hand, owing to the gradual tapering to its apex of the northern portion of the island, the only good navigable rivers are to be found towards the south.

A detailed description of the coastline of the territory is not required here, as those interested in such information can find full details in 'The China Sea Directory,' vol. ii.

It will suffice to enumerate the principal bays and anchorages, commencing with the west coast. Off Nosong Point, Pulo Tega affords an anchorage on one side or the other in either monsoon for large vessels. Half way between this and Gaya is the anchorage of Dinawan, with no less depth than 6¼ fathoms. Gaya Island affords protection from the north-east monsoon in two deep bays on its southern side, and together with the island of Sapangar and Gaya Head forms, with the mainland, the fine bay known as Gaya and Sapangar Bays. The united length of the two bays is about 7 miles, with a depth of water ranging from 8 to 13 fathoms. The width is about 4 miles, narrowing to 1¾ at the north end of Sapangar Bay. The main entrance is between Gaya and Sapangar Islands, with a width of 4500 yards across, and a depth of about 17 fathoms. It has been remarked that "for purposes of commerce these two bays are large enough to shelter every vessel trading to the east during both monsoons." Unfortunately, the shores all around are, as a rule, abruptly hilly, rendering it difficult to select good town sites. The Company has established a station on the east end of Gaya Island, where vessels drawing 20 feet can lie alongside the Government wharf well sheltered. The natives from the mainland bring in supplies of fowls and ducks, and it is a transhipping port for cattle from the opposite coast to Sandakan and Sulu. Water is obtained from springs and wells.

Recently Mr. S. E. Dalrymple has examined a harbour on the mainland near Tanjong Aru and the Putatan river, to the south-east of Gaya. This has not yet been officially surveyed,* but Mr. Dalrymple reports three entrances with a depth of 6 fathoms, and an average depth in the harbour of 5 fathoms. A wharf of 225 yards will lead into 3½ fathoms. He concludes his report by saying, "Finally the new harbour enjoys an unlimited amount of flat land to build on, stretching from the very water's edge, and a closely contiguous population of some 500 Bajows and 6000 to 7000 industrious Dusun agriculturists. It is my opinion that, next to Sandakan, this will prove to be the best harbour in North Borneo, as regards size, depth, accessibility, good holding ground," &c. He reports a good supply of fresh water.

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* Since this was written, a survey of Tanjong Aru has been made by order of Admiral Hamilton, C.B., and confirms Mr. Dalrymple's anticipations.

Proceeding north from Gaya, Ambong Cape is reached, between which and Sundal Point are three bays—Ambong Bay, depth of water 5 to 8 fathoms; Tangah Bay, 8 to 9 fathoms, and Tundal Bay, 4½ to 11 fathoms. In neither of these has any settlement been formed by the Company, there being no population to speak of; consequently provisions cannot be depended upon, and the water supply has not been examined, though two sources are reported in the first. All three bays are open to west and north-west winds. Ambong Bay affords shelter in both monsoons, and the other two in the north-east monsoon. The Admiralty Chart No. 1778 gives a plan of the three bays. About 3 miles to the north of Ambong Bay is that of Usukan, an inlet some 2 miles long, affording good anchorage in the north-east monsoon, but exposed to the south-west. Depth of water 6 to 10 fathoms. Usukan Island forms with the mainland the small bay of Abai, into which debouches the river of that name. The depth of water is marked in the Admiralty Chart as 1½ to 2 fathoms. There is communication for boats between Usukan and Abai Bays. In the latter a station was at one time established by the Company, but was withdrawn as the amount of trade attracted did not warrant the expenditure involved. Water is obtained from wells at Abai of fairly good quality. Cattle are occasionally obtainable, but supplies cannot be relied on.

The Mantanani Islands, 12 miles from the mainland, afford anchorage in either monsoon. They are uninhabited, except during the season when the edible birds' nests are collected from the small caves which exist.

The little bay of Agal, with a depth of 3¼ to 4 fathoms, gives a secure anchorage for a vessel in the north-east monsoon. This is the last of the anchorages worth mentioning on the west coast.

Turning round Sampanmangalo, the most northerly point of the mainland of Borneo, we enter the great Bay of Marudu. This bay runs nearly due north and south about 28 miles, and is some 17 miles broad at its entrance, decreasing to about 9 at its southern end. Its range of depth may be stated at from 3 to 20 fathoms. On its western shore, 11 miles from the entrance, is the excellent harbour of Kudat, at which a station has been formed by the Government. A plan of the harbour is given on Admiralty Chart No. 946. At the entrance the depth of water is 8 to 9 fathoms, and a distance of 1½ miles inwards reaches the 5 fathoms line, the 3 fathoms line being about half a mile further to the west. A jetty has been built into 2½ fathoms of water. A small stock of coal is kept up for the use of calling steamers. The water supply is not good. Cattle and vegetables are, as a rule, obtainable. Lights are exhibited on the jetty and on the flagstaff, the latter being 123 feet above sea level. Kudat Harbour was first reported in August, 1881, by Commander Johnstone, H.M.S. *Egeria*.

On the eastern shore of the bay there is said to be a well-sheltered deep-water harbour at Selimpadan, south of the Binkoka river, with excellent supplies of fresh water and a convenient site for a town, with land suitable for agricultural purposes in the vicinity. This harbour has not yet been surveyed.

Some twelve miles north of the entrance to Marudu Bay are the two large islands of Balambangan and Banguey, the former 40 square miles and the latter 167 square miles in extent. In both are harbours.

On the east side of Balambangan, which is uninhabited, are two inlets known as North and South Harbours, both affording good drinking water, but the purest being found in the southern one. Full directions for entering both harbours, which have a depth from 3 to 9 fathoms, but not free from dangers, will be found in the 'China Sea Directory,' vol. ii.

The harbour on the south side of Banguey Island was not reported until 1884. The following is the report of Mr. John Robertson, the Company's Assistant Surveyor, under date 12th January, 1886:—"Harbour. On reference to the chart the position of the entrances, beacons, and reefs will be seen. The part surveyed is 4½ miles long by an average of three-quarters of a mile in width. There are three entrances, of which the middle one is the principal. Its width at the narrowest point is 575 feet. The depth varies from 5 to 12 fathoms. The part of the harbour immediately in front of proposed site of town has a depth of water varying from 4 to 10 fathoms. The only disadvantages it has got are its comparative smallness and the presence of a dangerous reef near to the wharf. The entrance at the west end of the harbour has a width of 930 feet and a depth of 8 to 9 fathoms. This entrance can never be much used, as there is a reef in the passage which reduces the width to 400 feet. The entrance at the easterly end of the harbour has a width of 1040 feet and a depth of 7 to 8 fathoms. The passage from here to the proposed site of town is good, and has an average depth of 6 fathoms in the navigable parts. The harbour is well sheltered from both monsoons."

The reefs are all beaconed off.

The harbour is formed by three islands on the one side and Banguey on the other. Vessels using the Mallawalli Channel pass close to the harbour. An experimental settlement has been formed near the west end, to which the name of Mitford has been given. The water supply is reported good. A German company has a tobacco estate on the Limbuak river, west coast, and the interior is sparsely inhabited by peaceable Dusuns. Fleets of Bajow prahus are to be seen on the coasts, shifting their anchorage as the seasons demand.

In the Mallawalli Passage are numerous islands or islets, of which Mallawalli (15 square miles) is the largest. Off most of them anchorage can be found affording shelter from the prevailing winds.

Leaving Marudu Bay and steering to the south-east, the large bays known as Paitan and Marchesa are passed, neither of which have been surveyed. Next comes Labuk Bay, surveyed in 1883 by Commander the Hon. F. C. P. Vereker. He reports the bay to be 19 miles wide and 16 miles in depth to the Labuk River in its south-west corner. The north-west part of the bay is shallow and unnavigable. The south-western portion is deeper, affording a passage, in one part giving only 9 feet at low water, to the Labuk River.

Twenty miles to the south-west of Labuk Bay is the magnificent harbour of Sandakan. At its entrance, between Halhalla and Trusan Duyong, it is 1½ miles wide, from which place it gradually increases to its greatest width, viz. 5 miles. Its length is 15 miles, and it lies in a N.E. and S.W. direction.

The only part properly examined by the Admiralty is that north of Pulo Buy and the Bay of Sapa Gaya, situated on the east shore, but large sailing vessels proceed as far as German Town, on the island of Timbang, 11 miles up the bay, to load timber. Sandakan, the capital of the territory, is built on the north shore, three-quarters of a mile from the entrance. The only danger in approaching it is the Atjeh Rock, lying off the end of the Sandakan Pier. It has 2¼ fathoms low water, and is marked by a white buoy. From the entrance to the end of the bay the depth of water varies from 16 to 3 fathoms. Some thirteen rivers run into the bay, and a bar has formed 6 miles from the entrance with a depth of water of 4 fathoms at low water, spring tides. Spring tides rise 6 feet 9 inches; neaps vary from 1 foot to 4 feet. On the same shore as the town of Sandakan, and about 10 miles below it, is an inlet known as North Harbour, 3000 yards across at the entrance, and extending inland about 3 miles, with an average depth of from 7 to 10 fathoms. The Sapa Gaya Bay, on the shore opposite Sandakan, affords splendid anchorage for large vessels, lowest water 3½ fathoms. There are other good anchorages in the harbour, well sheltered. A pier has been erected at Sandakan, at which vessels drawing 22 feet can lie at low water. Supplies of poultry, beef, fish, vegetables, and liquors are obtainable in the town, and the water is plentiful and good. A good stock of coal is kept up for the use of Her Majesty's vessels and calling steamers.

Admiralty plan No. 950 gives details of the harbour.

Thirty miles to the south-east of Sandakan is Dewhurst Bay, 5 miles up the Kinabatangan. It is 3 miles long by 1 broad, with depths of from 1 to 2 fathoms. Fresh water has not yet been discovered. The river between the entrance points is 6 cables broad, with depths of from 4 to 5 fathoms: but the bar, which extends 2½ miles seaward, has a depth of only 12 feet at high water, spring tides. Commander Vereker adds the caution, "that vessels drawing more than 8 feet should not attempt to cross the bar without a boat ahead, as the tides are much influenced by the winds, rendering the time of high water uncertain."

A sketch of the Kinabatangan River will appear under its proper head, but it may be here remarked that the river has several mouths, and that the one usually made use of by small steamers is that known as the Mumiang, about 16 miles from Sandakan.

The mouth of the Marowap River, 52 miles to the east of Sandakan, is 7 cables wide at the entrance, with depths of from 3 to 5 fathoms. On the bar there is a depth of 14 feet at high water, spring tides.

Between Tambisan Island and the mainland is a narrow channel with 3 to 4 fathoms of water. The western end is blocked by a reef, though navigable for boats. The entrance is exposed to the N.E. monsoon.

Dent Haven, to the south of Tanjong Unsang, is nearly 2 miles wide, and affords good anchorage in the S.W. monsoon in 5 fathoms.

It may be noted that whereas in Sandakan springs rise 6 feet 9 inches, off Dewhurst Bay they rise 5½ feet, off Tambisan 3 feet, and in Dent Haven 3½ feet.

The coastline from Dent Haven to the Sibuku River, including the large Darvel Bay, has not yet been properly surveyed.

In Labun Bay, and off Sibat, Tolibas, and Tuncu, is good anchorage in the N.E. monsoon.

At the head of Darvel Bay the north end of Saccar Island forms with the mainland a fine harbour, well protected in all weather. The soil in this district is some of the richest in Borneo, and it is probable that a settlement will shortly be established here.

At Silam is a Government station and Experimental Garden. The harbour is well sheltered, but there are many coral banks. The depth of water varies from 2 to 20 fathoms. Vessels drawing 16 feet anchor close to the settlement. Beef, poultry, and fish can generally be obtained. The water is excellent and abundant.

In the southern portion of the bay there is deep water along the north and west of the Island of Timbu Mata, and a secure anchorage off Grassy Point, 3 to 13 fathoms, where deer and pig can generally be secured.

To the south of Grassy Point is a deep passage separating Culi Babang Island from the mainland, to which the name of Trusan (passage) Treacher has been given.

This passage, which is clear of dangers, is recommended by Lieutenant E. R. Connor, R.N., for vessels proceeding from Darvel Bay to Sibuku, or any of the numerous rivers north of the Sessajah. "This passage is much to be preferred to that viâ Omadal Island, as, in addition to being shorter, the long reefs running to the south-west of Omadal are occasionally somewhat difficult to make out."

Between Omadal and Culi Babang is a well-sheltered anchorage, with 8 to 9 fathoms. There is no water on the island, the natives obtaining their supplies from the opposite coast.

Off Mabul Island good anchorage is found in the south-west monsoon, in 11 fathoms, mud.

Friedrich Haven, off the mouth of the Palas River, was surveyed by an Austrian frigate of that name. There is anchorage in 5½ fathoms.

Between Batu Tinagat and the Sibuku River, the southern boundary of British North Borneo, is an extensive bay recently surveyed by the Dutch. The depth of water runs from 17 to 2 fathoms. Some 14 or 15 rivers run into this bay, which is well sheltered, and affords excellent anchorages. The Dutch have a gunboat stationed at the Tawao River, but there are no villages to be met with, nor even boats, save occasionally some wandering Bajows engaged in the bêche-de-mer fishery, which is capable of great development, and only awaits the settlement of the boundary dispute with Holland, to which reference has already been made.

From the above sketch it will be seen that British North Borneo is exceptionally favoured in the matter of harbours, roadsteads, and anchorages.

C. *Mountains and Rivers.*

The courses of the mountain ranges have not yet been laid down with any attempt at accuracy in the published maps.

It may be stated generally that there is a backbone range, which, commencing in the great mountain of Kinabalu (13,700 feet), 52 miles from the northern extremity of the island, runs in a south-westerly direction throughout the territory. The range is much nearer to the west than to the east coast, with the result that the rivers on the west are inferior in length to those on the east side, though the scenery is grander and the coast more indented with bays and inlets. Kinabalu itself rises within some 25 miles of the west coast; and this may be taken to be the average breadth of the coast between the backbone range and the sea. From this range, which has a height of from 5000 to 13,700 feet, many ridges are given off at right angles; and these in many cases are connected by cross ridges, running north and south. These ridges, as a rule, rise abruptly from the plains, and are steep and narrow.

In addition to this range, and between it and the sea on the west, is what is known as the Coast range, running parallel to it from somewhat to the north of Gaya to the southward, and with a height of between 3000 and 4000 feet.

Kinabalu has been ascended, though not perhaps to its highest peaks, by three travellers, Lobb, Low, and St. John. None of these travellers were successful in taking their instruments to the top, and the figures of height are those determined by Sir Edward Belcher by trigonometry. According to St. John, the summit is about two miles in length, but the intrepid explorer Witti gives the summit an extent of 4 to 5 miles of about uniform height. He further states that the highest peak is incorrectly marked on the Admiralty Charts, and should be 5 miles to the S.S.E. of the point there shown. Witti, who had observed Kinabalu from every side, writes as follows: "A chain 4500 feet high borders Kinabalu to the N.E., running S.E. to N.E., appearing like an enormous breastwork to the mountain as a redoubt, the Kopuakan Valley (containing one of the head waters of the Sugut River) forming the ditch and Tambugukon (8000 feet), a formidable bastion. The whole looks from this side (the N.E.) impregnable, and is evidently impracticable."

Burbidge, in his 'Gardens of the Sun,' gives it as his opinion, after experience, that the easiest route to Kinabalu is by the Tampassuk River on the west coast.

Borneo differs from all the other large islands of what Wallace terms Australasia in not possessing a single volcano, either active or extinct.

The summit of Kinabalu is said to consist of syenitic granite, here and there crossed by belts of a white rock; below the granite a hard kind of shale and greenstone.

About 50 miles to the S.E. is an independent group of mountains, of which the highest is Mentapok, said to be 8000 feet.

In the upper course of the Labuk, which flows to the south of Mentapok, the banks on both sides are very steep, the hills rising from 200 to 500 feet.

About the centre of the Darvel Bay Peninsula is Mount Hatton, so named in honour of Frank Hatton, the Company's Scientific Explorer, who lost his life by an accident on the Segama River. Its height is marked on the Admiralty Chart as 1990 feet. To the south of this is the Bagahac range, the highest summit being 2750 feet.

At the back of the Government station of Silam is the hill known as Bud Silam, 3000 feet in height. Between Silam and the Sibuku River are several lofty peaks not yet examined.

For many years there appeared on charts and maps of Borneo a large mythical lake to the south-eastward of Kinabalu. The confusion appears to have arisen from the fact that an extensive plain some 30 miles to the east of Kinabalu is known to the aboriginal inhabitants as Danao, which has no particular signification in their language, but amongst the Malay-speaking tribes of the coast, from whom travellers would derive their information, signifies "a lake." This plain, 1600 feet above the sea, is of oblong form, extending some 4 miles by 1, surrounded by mountains on each side, and watered by two streams, the Manaanaban and the Linogu, the latter being the source of the Labuk River. Danao is well cultivated, and for North Borneo, populous. Hatton, who visited it after Witti, was told that sometimes in the wet season the plain is a sheet of water for more than a month at a time.

Rivers.—The principal rivers are, on the east coast, the Kina Batangan, Labuk, Sugut, Paitan, Segama, Benguya, Moanud, Alfred, Sigaliud, and others; on the north the Bengkoka, Bongan, &c.; on the west coast the Padas, Kalias, Putatan, Tampassuk, Kimanis and others. Of the above the Kina Batangan is far the finest, being navigable for steam launches for over 200 miles, while its tributaries the Lokarn, Quarmote, Karamork, Mengkowago and others are themselves fine rivers. Some days' journey up the Quarmote above its junction with the Kina Batangan are the Alexandra falls, never yet seen by any European. There is a way behind the mangroves from Sandakan Bay to the Kina Batangan. The Labuk is a river similar in character, but not navigable for steam launches for any great distance; its chief tributaries are the Galagaan, Toongud, Arngsoan and others; it falls into the sea in the Labuk Bay shortly to the north of Sandakan, to which place all its trade comes; all the above-mentioned rivers are capable of supporting a very large population.

The Padas is a very fine river navigable for a long distance, and having on its banks many sago plantations, which are a source of considerable wealth to the inhabitants of the district.

CHAPTER III.—POPULATION.

THE population of British North Borneo is very scanty, so much so that vast tracts on the east coast and in the interior are simply uninhabited forest. On the west coast the population in some districts is fairly large. The want of people on the east coast is due to the ravages, in old days, of pirates by sea and head hunters by land. Commencing on the seaboard of the east coast, the first people met with are the Bajaus, or Sea Gypsies, on the littoral. The villages on the sea coast and at the rivers' mouths contain many Sooloos, Bugis, Illanuns, and others, but the first tribe of true Bornean aboriginals met with is the Booloodoopy, who have villages from Sugut and Paitan on the north to Tabunac on the south. Largely mixed up with them are the Doompas on the north and the Eraans on the south. Inland from these people the whole bulk of the population are known as Dusuns or Sundyaks, divided up into many tribes and sections, including the Roongas, Kooroories, Umpooloons, Saga Sagas, Tunbunwhas, Tingaras, Roomanows, and many others, those of the far interior little better than roving savages, while nearer either coast, where they have rubbed against Mahommedan civilisation, they are much more cultivated both in their dress and manners. The Bajaus or Sea Gypsies are a curious wandering irresponsible sort of race, rather low down in the scale of humanity, living almost entirely in boats in families. Though undoubtedly of Malay origin, they are much larger in stature, and stronger and darker than ordinary Malays. Not caring to store up property, and rarely troubling themselves as to where next week's meals are to come from, they pick up a precarious livelihood, along the shore line, by catching fish, finding sea slugs and turtle eggs, spearing sharks, and so forth. They lead a wild, free, roving life in the open air, untroubled by any care or thought for the morrow. The weapons they use are the parang, spear, round shield, and tumbeloosow; very few of them have guns. The tumbeloosow is a long light lance, made of bamboo, with a sharp wooden spike at the end; this they can throw for two or three score yards, thus giving them a great advantage over any people not armed with any projectile. The well-known Balignini were a subdivision of the great Bajau tribe; they used, as professional kidnappers, to harry the seas from Macassar, Batavia, and Singapore on the south, to Manila on the north; they did not, as a rule, murder without they thought there was occasion to do so. In Sandakan and other places there are many people now living who were

Annex 11

TREACHER, W.H., "BRITISH BORNEO: SKETCHES OF BRUNAI, SARAWAK, LABUAN AND NORTH BORNEO", *JOURNAL OF THE STRAITS BRANCH OF THE ROYAL ASIATIC SOCIETY* NO. 21, CHAPTERS VII-XI, PP. 48-121, JUNE 1890

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Labuan[*] at one time boasted a Colonial Chaplain and gave its name to the Bishop's See; but in 1872 or 1873, the Church was "disestablished" and the few European Officials who formed the congregation were unable to support a Clergyman. There exists a pretty little wooden Church, and the same indefatigable officer, whom I have described as filling most of the Government appointments in the Colony, now acts as unpaid Chaplain, having been licensed thereto by the Bishop of Singapore and Sarawak, and reads the service and even preaches a sermon every Sunday to a congregation which rarely numbers half a dozen.

CHAPTER VII.

The mode of acquisition of British North Borneo has been referred to in former pages: it was by cession for annual money payments to the Sultans of Brunai and of Sulu, who had conflicting claims to be the paramount power in the northern portion of Borneo. The actual fact was that neither of them exercised any real government or authority over by far the greater portion, the inhabitants of the coast on the various rivers following any Brunai, Illanun, Bajau, or Sulu Chief who had sufficient force of character to bring himself to the front. The pagan tribes of the interior owned allegiance to neither Sultan, and were left to govern themselves, the Muhammadan coast people considering them fair game for plunder and oppression whenever opportunity occurred, and using all their endeavours to prevent Chinese and other foreign traders from reaching them, acting themselves as middlemen, buying (bartering) at very cheap rates from the aborigines and selling for the best price they could obtain to the foreigner.

I believe I am right in saying that the idea of forming a Company, something after the manner of the East India Company, to take over and govern North Borneo, originated in the following manner. In 1865 Mr. MOSES, the unpaid Consul for the United Sates in Brunai, to whom reference has been made before, acquired with his friends from the Sultan of Brunai some concessions of territory with the right to govern and collect revenues, their idea being to introduce Chinese and establish a Colony. This they attempted to carry out on a small scale in the Kimanis River, on the West Coast, but not having sufficient capital the scheme collapsed, but the concession was retained. Mr. MOSES subsequently lost his life at sea, and a Colonel TORREY became the chief representative of the American syndicate. He was engaged in business in China, where he met Baron VON OVERBECK, a merchant of Hongkong and Austrian Consul-General, and interested him in the scheme. In 1875 the Baron visited Borneo in company with the Colonel, interviewed the Sultan of Brunai, and made enquiries as to the validity of the concessions, with apparently satisfactory results. Mr. ALFRED DENT* was also a China merchant well known in Shanghai, and he in turn was interested in the idea by Baron OVERBECK. Thinking there might be something in the scheme, he provided the required capital, chartered a steamer, the *America*, and authorised Baron OVERBECK to proceed to Brunai to endeavour, with Colonel TORREY'S assistance, to induce the Sultan and his Ministers to transfer the American cessions to himself and the Baron, or rather to cancel the previous ones and make out new ones in their favour and that of their heirs, associates, successors and assigns for so long as they should choose or desire to hold them. Baron VON OVERBECK was accompanied by Colonel TORREY and a staff of three Europeans, and, on settling some arrears due by the American Company, succeeded in accomplishing the objects of his mission, after protracted and tedious negotiations, and obtained a "chop" from the Sultan nominating and appointing him supreme ruler, "with the title of Maharaja of Sabah (North Borneo) and Raja of Gaya and Sandakan, with power of life and death over the inhabitants, with all the absolute rights of property vested in the Sultan over the soil of the country, and the right to dispose of the same, as well as of the rights over the productions of the country, whether mineral, vegetable, or animal, with the rights of making laws, coining money, creating an army and navy, levying customs rates on home and foreign trade and shipping, and other dues and taxes on the inhabitants as to him might seem good or expedient, together with all other powers and rights usually exercised by and belonging to sovereign rulers, and which the Sultan thereby delegated to him of his own free will; and the Sultan called upon all foreign nations, with whom he had formed friendly treaties and alliances, to acknowledge the said Maharaja as the Sultan himself in the said territories and to respect his authority therein; and in the case of the death or retirement from the said office of the said Maharaja, then his duly appointed successor in the office of Supreme Ruler and Governor-in-Chief of the Company's territories in Borneo should likewise succeed to the office and title of Maharaja of Sabah and Raja of Gaya and Sandakan, and all the powers above enumerated be vested in him." I am quoting from the preamble to the Royal Charter. Some explanation of the term "Sabah" as applied to the territory—a term which appears in the Prayer Book version of the 72nd Psalm, verse 10, "The kings of Arabia and Sabah shall bring gifts"—seems called for, but I regret to say I have not been able to obtain a satisfactory one from the Brunai people, who use it in connection only with a small portion of the West Coast of Borneo, North of the Brunai river. Perhaps the following note, which I take from Mr. W. E. MAXWELL'S "Manual of the Malay Language," may have some slight bearing on the point:—"Sawa, Jawa, Saba, Jaba, Zaba, etc., has evidently in all times been the capital local name in Indonesia. The whole archipelago was pressed into an island of that name by the Hindus and Romans. Even in the time of MARCO POLO we have only a Java Major and a Java Minor. The Bugis apply the name of Jawa, *Jawaka* (comp. the Polynesian *Sawaiki*, Ceramese *Sawai*) to the Moluccas. One of the principal divisions of Battaland in Sumatra is called *Tanah* Jawa. PTOLEMY has both Jaba and Saba."—"Logan, Journ. Ind. Arch., iv, 338." In the Brunai use of the term, there is always some idea of a Northerly direction; for instance, I have heard a Brunai man who was passing from the South to the Northern side of his river, say he was going *Saba*. When the Company's Government was first inaugurated, the territory was, in official documents, mentioned as Sabah, a name which is still current amongst the natives, to whom the now officially accepted designation of *North Borneo* is meaningless and difficult of pronunciation.

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[*] The administration of this little Crown Colony has since been entrusted to the British North Borneo Company, their present Governor, Mr. C. V. CREAGH, having been gazetted Governor of Labuan.

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* Now Sir ALFRED DENT, K.C.M.G.

Having settled with the Brunai authorities, Baron VON OVERBECK next proceeded to Sulu, and found the Sultan driven out of his capital, Sugh or Jolo, by the Spaniards, with whom he was still at war, and residing at Maibun, in the principal island of the Sulu Archipelago. After brief negotiations, the Sultan made to Baron VON OVERBECK and Mr. ALFRED DENT a grant of his rights and powers over the territories and lands tributary to him on the mainland of the island of Borneo, from the Pandassan River on the North West Coast to the Sibuko River on the East, and further invested the Baron, or his duly appointed successor in the office of supreme ruler of the Company's territories in Borneo, with the high sounding titles of Datu Bandahara and Raja of Sandakan.

On a company being formed to work the concessions, Baron VON OVERBECK resigned these titles from the Brunai and Sulu Potentates and they have not since been made use of, and the Baron himself terminated his connection with the country.

The grant from the Sultan of Sulu bears date the 22nd January, 1878, and on the 22nd July of the same year he signed a treaty, or act of re-submission to Spain. The Spanish Government claimed that, by previous treaties with Sulu, the sovereignty of Spain over Sulu and its dependencies in Borneo had been recognised and that consequently the grant to Mr DENT was void. The British Government did not, however, fall in with this view, and in the early part of 1879, being then Acting Consul-General in Borneo, I was despatched to Sulu and to different points in North Borneo to publish on behalf of our Government, a protest against the claim of Spain to any portion of the country. In March, 1885, a protocol was signed by which, in return for the recognition by England and Germany of Spanish sovereignty throughout the Archipelago of Sulu, Spain renounced all claims of sovereignty over territories on the Continent of Borneo which had belonged to the Sultan of Sulu, including the islands of Balambangan, Banguey and Malawali, as well as all those comprised within a zone of three maritime leagues from the coast.

Holland also strenuously objected to the cessions and to their recognition, on the ground that the general tenor of the Treaty of London of 1824 shews that a mixed occupation by England and the Netherlands of any island in the Indian Archipelago ought to be avoided.

It is impossible to discover anything in the treaty which bears out this contention. Borneo itself is not mentioned by name in the document, and the following clauses are the only ones regulating the future establishment of new Settlements in the Eastern Seas by either Power:—" Article 6. It is agreed that orders shall be given by the two Governments to their Officers and Agents in the East not to form any new Settlements on any of the islands in the Eastern Seas, without previous authority from their respective Governments in Europe. Art. 12 His Britannic Majesty, however, engages, that no British Establishment shall be made on the Carimon islands or on the islands of Battam, Bintang, Lingin, or on any of the other islands South of the Straits of Singapore, nor any treaty concluded by British authority with the chiefs of those islands." Without doubt, if Holland in 1824 had been desirous of prohibiting any British Settlement in the island of Borneo, such prohibition would have been expressed in this treaty. True, perhaps half of this great island is situated *South of the* Straits of Singapore, but the island cannot therefore be correctly said to lie to the South of the Straits and, at any rate, such a business-like nation as the Dutch would have noticed a weak point here and have included Borneo in the list with Battam and the other islands enumerated. Such was the view taken by Mr. GLADSTONE's Cabinet, and Lord GRANVILLE informed the Dutch Minister in 1882 that the XIIth Article of the Treaty could not be taken to apply to Borneo, and "that as a a matter of international right they would have no ground to object even to the absolute annexation of North Borneo by Great Britain," and, moreover, as pointed out by his Lordship, the British had already a settlement in Borneo, namely the island of Labuan, ceded by the Sultan of Brunai in 1845 and confirmed by him in the Treaty of 1847. The case of Raja **BROOKE** in Sarawak was also practically that of a British Settlement in Borneo.

Lord **GRANVILLE** closed the discussion by stating that the grant of the Charter does not in any way imply the assumption of *sovereign rights* in North Borneo, *i.e.*, on the part of the British Government.

There the matter rested, but now that the Government is proposing* to include British North Borneo, Brunai and Sarawak under a formal "British Protectorate," the Netherlands Government is again raising objections, which they must be perfectly aware are groundless. It will be noted that the Dutch do not lay any claim to North Borneo themselves, having always recognized it as pertaining, with the Sulu Archipelago, to the Spanish Crown. It is only to the presence of the British Government in North Borneo that any objection is raised. In a "Resolution" of the Minister of State, Governor-General of Netherlands India, dated 28th February, 1846, occurs the following:—"The parts of Borneo on which the Netherlands does not exercise any influence are:—

a. The States of the Sultan of Brunai or Borneo Proper;

* * * * *

b. The State of the Sultan of the Sulu Islands, having for boundaries on the West, the River Kimanis, the North and North-East Coasts as far as 3° N.L., where it is bounded by the River Atas, forming the extreme frontier towards the North with the State of Berow dependant on the Netherlands.

c. All the islands of the Northern Coasts of Borneo."

Knowing this, Mr. **ALFRED DENT** put the limit of his cession from Sulu at the Sibuku River, the South bank of which is in N. Lat. 4° 5'; but towards the end of 1879, that is, long

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* The Protectorate has since been proclaimed.

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after the date of the cession, the Dutch hoisted their flag at Batu Tinagat in N. Lat. 4° 19', thereby claiming the Sibuko and other rivers ceded by the Sultan of Sulu to the British Company. The dispute is still under consideration by our Foreign Office, but in September, 1883, in order to practically assert the Company's claims, I, as their Governor, had a very pleasant trip in a very small steam launch and steaming at full speed past two Dutch gun-boats at anchor, landed at the South bank of the Sibuko, temporarily hoisted the North Borneo flag, fired a *feu de-joie*, blazed a tree, and returning, exchanged visits with the Dutch gun-boats, and entertained the Dutch Controlleur at dinner. Having carefully given the Commander of one of the gun-boats the exact bearings of the blazed tree, he proceeded in hot haste to the spot, and, I believe, exterminated the said tree. The Dutch Government complained of our having violated Netherlands territory, and matters then resumed their usual course, the Dutch station at Batu Tinagat, or rather at the Tawas River, being maintained unto this day.

As is hereafter explained, the cession of coast line from the Sultan of Brunai was not a continuous one, there being breaks on the West Coast in the case of a few rivers which were not included. The annual tribute to be paid to the Sultan was fixed at $12,000, and to the Pangeran Tumonggong $3,000—extravagantly large sums when it is considered that His Highness' revenue per annum from the larger portion of the territory ceded was *nil*. In March, 1881, through negotiations conducted by Mr. A. H. EVERETT, these sums were reduced to more reasonable proportions, namely, $5,000 in the case of the Sultan, and $2,500 in that of the Tumonggong.

The intermediate rivers which were not included in the Sultan's cession belonged to Chiefs of the blood royal, and the Sultan was unwilling to order them to be ceded, but in 1883 Resident DAVIES procured the cession from one of these Chiefs of the Pangalat River for an annual payment of $300, and subsequently the Putatan River was acquired for $1,000 per annum, and the Kawang River and the Mantanani Islands for lump sums of $1,300 and $350 respectively. In 1884, after prolonged negotiations, I was also enabled to obtain the ces-

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sion of an important Province on the West Coast, to the South of the original boundary, to which the name of Dent Province has been given, and which includes the Padas and Kalias Rivers, and in the same deed of cession were also included two rivers which had been excepted in the first grant—the Tawaran and the Bangawan. The annual tribute under this cession is $3,100. The principal rivers within the Company's boundaries still unleased are the Kwala Lama, Membakut, Inanam and Menkabong. For fiscal reasons, and for the better prevention of the smuggling of arms and ammunition for sale to head-hunting tribes, it is very desirable that the Government of these remaining independent rivers should be acquired by the Company.

On the completion of the negotiations with the two Sultans, Baron VON OVERBECK, who was shortly afterwards joined by Mr. DENT, hoisted his flag—the house flag of Mr. DENT'S firm—at Sandakan, on the East Coast, and at Tampassuk and Pappar on the West, leaving at each a European, with a few so-called Police to represent the new Government, agents from the Sultans of Sulu and Brunai accompanying him to notify to the people that the supreme power had been transferred to Europeans. The common people heard the announcement with their usual apathy, but the officer left in charge had a difficult part to play with the headmen who, in the absence of any strong central Government, had practically usurped the functions of Government in many of the rivers. These Chiefs feared, and with reason, that not only would their importance vanish, but that trade with the inland tribes would be thrown open to all, and slave dealing be put a stop to under the new regime. At Sandakan, the Sultan's former Governor refused to recognise the changed position of affairs, but he had a resolute man to deal with in Mr. W. B. PRYER, and before he could do much harm, he lost his life by the capsizing of his prahu while on a trading voyage.

At Tampassuk, Mr. PRETYMAN, the Resident, had a very uncomfortable post, being in the midst of lawless, cattle-lifting and slave-dealing Bajaus and Illanuns. He, with the able assistance of Mr. F. X. WITTI, an ex-Naval officer of the

Austrian Service, who subsequently lost his life while exploring in the interior, and by balancing one tribe against another, managed to retain his position without coming to blows, and, on his relinquishing the service a few months afterwards, the arduous task of representing the Government without the command of any force to back up his authority developed on Mr. WITTI. In the case of the Pappar River, the former Chief, Datu BAHAR, declined to relinquish his position, and assumed a very defiant attitude. I was at that time in the Labuan service, and I remember proceeding to Pappar in an English man-of-war, in consequence of the disquieting rumours which had reached us, and finding the Resident, Mr. A. H. EVERETT, on one side of the small river with his house strongly blockaded and guns mounted in all available positions, and the Datu on the other side of the stream, immediately opposite to him, similarly armed to the teeth. But not a shot was fired, and Datu BAHAR is now a peaceable subject of the Company.

The most difficult problem, however, which these officers had to solve was that of keeping order, or trying to do so, amongst a lawless people, with whom for years past might had been right, and who considered kidnapping and cattle-lifting the occupations of honourable and high spirited gentlemen. That they effected what they did, that they kept the new flag flying and prepared the way for the Government of the Company, reflects the highest credit upon their pluck and diplomatic ingenuity, for they had neither police nor steam launches, nor the prestige which would have attached to them had they been representatives of the British Government, and under the well known British flag. They commenced their work with none of the *éclat* which surrounded Sir JAMES BROOKE in Sarawak, where he found the people in successful rebellion against the Sultan of Brunai, and was himself recognised as an agent of the British Government, so powerful that he could get the Queen's ships to attack the head hunting pirates, killing such numbers of them that, as I have said, the Head money claimed and awarded by the British Government reached the sum of *£20,000*. On the other hand, it is but fair to add that the fame of Sir JAMES' exploits and the action taken by Her Majesty's vessels, on his advice, in North-West Borneo years before, had inspired the natives with a feeling of respect for Englishmen which must have been a powerful factor in favour of the newly appointed officers. The native tribes, too, inhabiting North Borneo were more sub-divided, less warlike, and less powerful than those of Sarawak.

The promoters of the scheme were fortunate in obtaining the services, for the time being, as their chief representative in the East of Mr. W. H. READ, C.M.G., an old friend of Sir JAMES BROOKE, and who, as a Member of the Legislative Council of Singapore, and Consul-General for the Netherlands, had acquired an intimate knowledge of the Malay character and of the resources, capabilities and needs of Malayan countries.

On his return to England, Mr. DENT found that, owing to the opposition of the Dutch and Spanish Governments, and to the time required for a full consideration of the subject by Her Majesty's Ministers, there would be a considerable delay before a Royal Charter could be issued, meanwhile, the expenditure of the embryo Government in Borneo was not inconsiderable, and it was determined to form a "Provisional Association" to carry on till a Chartered Company could be formed.

Mr. DENT found an able supporter in Sir RUTHERFORD ALCOCK, K.C.B., who energetically advocated the scheme from patriotic motives, recognising the strategic and commercial advantages of the splendid harbours of North Borneo and the probability of the country becoming in the near future a not unimportant outlet for English commerce, now so heavily weighted by prohibitive tariffs in Europe and America.

The British North Borneo Provisional Association Limited, was formed in 1881, with a capital of £300,000, the Directors being Sir RUTHERFORD ALCOCK, Mr. A. DENT, Mr. R. B. MARTIN, Admiral MAYNE, and Mr. W. H. READ. The Association acquired from the original lessees the grants and commissions from the Sultans, with the object of disposing of these territories, lands and property to a Company to be incorporated by Royal Charter. This Charter passed the Great

Seal on the 1st November, 1881, and constituted and incorporated the gentlemen above-mentioned as "The British North Borneo Company."

The Provisional Association was dissolved, and the Chartered Company started on its career in May, 1882. The nominal capital was two million pounds, in £20 shares, but the number of shares issued, including 4,500 fully paid ones representing £90,000 to the vendors, was only 33,030, equal to £660,600, but on 23,449 of these shares only £12 have so far been called up. The actual cash, therefore, which the Company has had to work with and to carry on the development of the country from the point at which the original concessionaires and the Provisional Association had left it, is, including some £1,000 received for shares forfeited, about £384,000, and they have a right of call for £187,592 more. The Charter gave official recognition to the concessions from the Native Princes, conferred extensive powers on the Company as a corporate body, provided for the just government of the natives and for the gradual abolition of slavery, and reserved to the Crown the right of disapproving of the person selected by the Company to be their Governor in the East, and of controlling the Company's dealings with any Foreign Power.

The Charter also authorised the Company to use a distinctive flag, indicating the British character of the undertaking, and the one adopted, following the example of the English Colonies, is the British flag, "defaced," as it is termed, with the Company's badge - a lion. I have little doubt that this selection of the British flag, in lieu of the one originally made use of, had a considerable effect in imbuing the natives with an idea of the stability and permanence of the Company's Government.

Mr. DENT'S house flag was unknown to them before and, on the West Coast, many thought that the Company's presence in the country might be only a brief one, like that of its predecessor, the American syndicate, and, consequently, were afraid to tender their allegiance, since, on the Company's withdrawal, they would be left to the tender mercies of their former Chiefs. But the British flag was well-known to those of them who were traders, and they had seen it flying for many a year in the Colony of Labuan and on board the vessels which had punished their piratical acts in former days.

Then, too, I was soon able to organise a Police Force mainly composed of Sikhs, and was provided with a couple of steam-launches. Owing doubtless to that and other causes, the refractory chiefs, soon after the Company's formation, appeared to recognize that the game of opposition to the new order of things was a hopeless one.

CHAPTER VIII.

The area of the territory ceded by the original grants was estimated at 20,000 square miles, but the additions which have been already mentioned now bring it up to about 30,000 square miles, including adjacent islands, so that it is somewhat larger than Ceylon, which is credited with only 25,305 square miles. In range of latitude, in temperature and in rainfall, North Borneo presents many points of resemblance to Ceylon, and it was at first thought that it might be possible to attract to the new country some of the surplus capital, energy and aptitude for planting which had been the foundation of Ceylon's prosperity.

Even the expression "The New Ceylon" was employed as an alternative designation for the country, and a description of it under that title was published by the well known writer—Mr. JOSEPH HATTON.

These hopes have not so far been realized, but on the other hand North Borneo is rapidly becoming a second Sumatra, Dutchmen, Germans and some English having discovered the suitability of its soil and climate for producing tobacco of a quality fully equal to the famed Deli leaf of that island.

The coast line of the territory is about one thousand miles, and a glance at the map will shew that it is furnished with capital harbours, of which the principal are Gaya Bay on the West, Kudat in Marudu Bay on the North, and Sandakan Harbour on the East. There are several others, but at those enumerated the Company have opened their principal stations.

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Of the three mentioned, the more striking is that of Sandakan, which is 15 miles in length, with a width varying from 1½ miles, at its entrance, to 5 miles at the broadest part. It is here that the present capital is situated—Sandakan, a town containing a population of not more than 5,000 people, of whom perhaps thirty are Europeans and a thousand Chinese. For its age, Sandakan has suffered serious vicissitudes. It was founded by Mr. PRYER, in 1878, well up the bay, but was soon afterwards burnt to the ground. It was then transferred to its present position, nearer the mouth of the harbour, but in May, 1886, the whole of what was known as the "Old Town" was utterly consumed by fire; in about a couple of hours there being nothing left of the *atap*-built shops and houses but the charred piles and posts on which they had been raised above the ground. When a fire has once laid hold of an atap town, probably no exertions would much avail to check it; certainly the Chinese held this opinion, and it was impossible to get them to move hand or foot in assisting the Europeans and Police in their efforts to confine its ravages to as limited an area as possible. They entertain the idea that such futile efforts tend only to aggravate the evil spirits and increase their fury. The Hindu shopkeepers were successful in saving their quarter of the town by means of looking glasses, long prayers and chants. It is now forbidden to any one to erect atap houses in the town, except in one specified area to which such structures are confined. Most of the present houses are of plank, with tile, or corrugated iron roofs, and the majority of the shops are built over the sea, on substantial wooden piles, some of the principal "streets," including that to which the ambitious name of "The Praya" has been given, being similarly constructed on piles raised three or four feet above high water mark. The reason is that, owing to the steep hills at the back of the site, there is little available flat land for building on, and, moreover, the pushing Chinese trader always likes to get his shops as near as possible to the sea—the highway of the "prahus" which bring him the products of the neighbouring rivers and islands. In time, no doubt, the Sandakan hills will be used to reclaim more land from the sea, and the town will cease to be an amphibious one. In the East there are, from a sanitary point of view, some points of advantage in having a tide-way passing under the houses. I should add that Sandakan is a creation of the Company's and not a native town taken over by them. When Mr. PRYER first hoisted his flag, there was only one solitary Chinaman and no Europeans in the harbour, though at one time, during the Spanish blockade of Sulu, a Singapore firm had established a trading station, known as "Kampong German," using it as their head-quarters from which to run the blockade of Sulu, which they successfully did for some considerable time, to their no small gain and advantage. The success attending the Germans' venture excited the emulation of the Chinese traders of Labuan, who found their valuable Sulu trade cut off and, through the good offices of the Government of the Colony, they were enabled to charter the Sultan of Brunai's smart little yacht the *Sultana*, and engaging the services as Captain of an ex-member of the Labuan Legislative Council, they endeavoured to enact the roll of blockade runner. After a trip or two, however, the *Sultana* was taken by the Spaniards, snugly at anchor in a Sulu harbour, the Captain and Crew having time to make their escape. As she was not under the British flag, the poor Sultan could obtain no redress, although the blockade was not recognised as effective by the European Powers and English and German vessels, similarly seized, had been restored to their owners. The *Sultana* proved a convenien despatch boat for the Spanish authories. The Sultan of Sulu to prove his friendship to the Labuan traders, had an unfortunate man cut to pieces with krisses, on the charge of having betrayed the vessel's position to the blockading cruisers.

Sandakan is one of the few places in Borneo which has been opened and settled without much fever and sickness ensuing, and this was due chiefly to the soil being poor and sandy and to there being an abundance of good, fresh, spring water. It may be stated, as a general rule, that the richer the soil the more deadly will be the fever the pioneers will have to encounter when the primeval jungle is first felled and the sun's rays admitted to the virgin soil.

Sandakan is the principal trading station in the Company's territory, but with Hongkong only 1,200 miles distant in one direction, Manila 600 miles in another, and Singapore 1,000 miles in a third, North Borneo can never become an emporium for the trade of the surrounding countries and islands, and the Court of Directors must rest content with developing their own local trade and pushing forward, by wise and encouraging regulations, the planting interest, which seems to have already taken firm root in the country and which will prove to be the foundation of its future prosperity. Gold and other minerals, including coal, are known to exist, but the mineralogical exploration of a country covered with forest and destitute of roads is a work requiring time, and we are not yet in a position to pronounce on North Borneo's expectations in regard to its mineral wealth.

The gold on the Segama River, on the East coast, has been several times reported on, and has been proved to exist in sufficient quantities to, at any rate, well repay the labours of Chinese gold diggers, but the district is difficult of access by water, and the Chinese are deferring operations on a large scale until the Government has constructed a road into the district. A European Company has obtained mineral concessions on the river, but has not yet decided on its mode of operation, and individual European diggers have tried their luck on the fields, hitherto without meeting with much success, owing to heavy rains, sickness and the difficulty of getting up stores. The Company will probably find that Chinese diggers will not only stand the climate better, but will be more easily governed, be satisfied with smaller returns, and contribute as much or more than the Europeans to the Government Treasury, by their consumption of opium, tobacco and other excisable articles, by fees for gold licenses, and so forth.

Another source of natural wealth lies in the virgin forest with which the greater portion of the country is clothed, down to the water's edge. Many of the trees are valuable as timber, especially the *Billian*, or Borneo iron-wood tree, which is impervious to the attacks of white-ants ashore and almost equally so to those of the *teredo navalis* afloat, and is wonderfully enduring of exposure to the tropical sun and the tropical downpours of rain. I do not remember having ever come across a bit of *billian* that showed signs of decay during a residence of seventeen years in the East. The wood is very heavy and sinks in water, so that, in order to be shipped, it has to be floated on rafts of soft wood, of which there is an abundance of excellent quality, of which one kind—the red *serayah*—is likely to come into demand by builders in England. Other of the woods, such as *mirabau*, *penagah* and *rengas*, have good grain and take a fine polish, causing them to be suitable for the manufacture of furniture. The large tree which yields the Camphor *barus* of commerce also affords good timber. It is a *Dryobalanops*, and is not to be confused with the *Cinnamomum camphora*, from which the ordinary "camphor" is obtained and the wood of which retains the camphor smell and is largely used by the Chinese in the manufacture of boxes, the scented wood keeping off ants and other insects which are a pest in the Far East. The Borneo camphor tree is found only in Borneo and Sumatra. The camphor which is collected for export, principally to China and India, by the natives, is found in a solid state in the trunk, but only in a small percentage of the trees, which are felled by the collectors. The price of this camphor *barus* as it is termed, is said to be nearly a hundred times as much as that of the ordinary camphor, and it is used by the Chinese and Indians principally for embalming purposes. Billian and other woods enumerated are all found near the coast and, generally, in convenient proximity to some stream, and so easily available for export. Sandakan harbour has some thirteen rivers and streams running into it, and, as the native population is very small, the jungle has been scarcely touched, and no better locality could, therefore, be desired by a timber merchant. Two European Timber Companies are now doing a good business there, and the Chinese also take their share of the trade. China affords a ready and large market for Borneo timber, being itself almost forestless, and for many years past it has received ironwood from Sarawak. Borneo timber has also been exported to the Straits Settlements, Australia and Mauritius, and I hear that an order has been given for England. Iron wood is only found in certain districts, notably in Sandakan Bay and on the East coast, being rarely met with on the West coast. I have seen a private letter from an officer in command of a British man-of-war who had some samples of it on board which came in very usefully when certain bearings of the screw shaft were giving out on a long voyage, and were found to last *three times* as long as lignum vitæ.

In process of time, as the country is opened up by roads and railways, doubtless many other valuable kinds of timber trees will be brought to light in the interior.

A notice of Borneo Forests would be incomplete without a reference to the mangroves, which are such a prominent feature of the country as one approaches it by sea, lining much of the coast and forming, for mile after mile, the actual banks of most of the rivers. Its thick, dark-green, never changing foliage helps to give the new comer that general impression of dull monotony in tropical scenery, which, perhaps, no one, except the professed botanist, whose trained and practical eye never misses the smallest detail, ever quite shakes off.

The wood of the mangrove forms most excellent firewood, and is often used by small steamers as an economical fuel in lieu of coal, and is exported to China in the timber ships. The bark is also a separate article of export, being used as a dye and for tanning, and is said to contain nearly 42% of *tannin*.

The value of the general exports from the territory is increasing every year, having been $145,444 in 1881 and $525,879 in 1888. With the exception of tobacco and pepper, the list is almost entirely made up of the natural raw products of the land and sea—such as bees-wax, camphor, damar, gutta percha, the sap of a large forest tree destroyed in the process of collection of gutta, India rubber, from a creeper likewise destroyed by the collectors, rattans, well known to every school boy, sago, timber, edible birds'-nests, seed-pearls, Mother-o'-pearl shells in small quantities, dried fish and dried sharks'-fins, trepang (sea slug or bêche de mer), aga, or edible sea-weed, tobacco (both Native and European grown), pepper, and occasionally elephants' tusks—a list which shews the country to be a rich store-house of natural productions, and one which will be added to, as the land is brought under cultivation with coffee, tea, sugar, cocoa, Manila hemp, pine apple fibre, and other tropical products for which the soil, and especially the rainfall, temperature and climatic conditions generally, including entire freedom from typhoons and earthquakes, eminently adapt it, and many of which have already been tried with success on an experimental scale. As regards pepper, it has been previously shewn that North Borneo was in former days an exporter of this spice. Sugar has been grown by the natives for their own consumption for many years, as also tapioca, rice and Indian corn. It is not my object to give a detailed list of the productions of the country, and I would refer any reader who is anxious to be further enlightened on these and kindred topics to the excellent "Hand-book of British North Borneo," prepared for the Colonial and Indian Exhibition of 1886, at which the new Colony was represented, and published by Messrs. WILLIAM CLOWES & SONS.

The edible birds'-nests are already a source of considerable revenue to the Government, who let out the collection of them for annual payments, and also levy an export duty as they leave the country for China, which is their only market. The nests are about the size of those of the ordinary swallow and are formed by innumerable hosts of swifts—*Collocalia fuciphaga*—entirely from a secretion of the glands of the throat. These swifts build in caves, some of which are of very large dimensions, and there are known to be some sixteen of them in different parts of British North Borneo. With only one exception, the caves occur in limestone rocks and, generally, at no great distance from the sea, though some have been discovered in the interior, on the banks of the Kinabatangan River. The exception above referred to is that of a small cave on a sand-stone island at the entrance of Sandakan harbour. The *Collocalia fuciphaga* appears to be pretty well distributed over the Malayan islands, but of these, Borneo and Java are the principal sources of supply. Nests are also exported from the Andaman Islands, and a revenue of £30,000 a year is said to be derived from the nests in the small islands in the inland sea of Tale Sab, inhabited by natives of Malay stock.

The finest caves, or rather series of caves, as yet known in the Company's territories are those of Gomanton, a limestone hill situated at the head of the Sapa Gaia, one of the streams running into Sandakan harbour.

These grand caves, which are one of the most interesting sights in the country, are, in fine weather, easily accessible from the town of Sandakan, by a water journey across the harbour and up the Sapa Gaia, of about twelve miles, and by a road from the point of debarkation to the entrance of the lower caves, about eight miles in length.

The height of the hill is estimated at 1,000 feet, and it contains two distinct series of caves. The first series is on the "ground floor" and is known as *Simud Hitam*, or "black entrance." The magnificent porch, 250 feet high and 100 broad, which gives admittance to this series, is on a level with the river bank, and, on entering, you find yourself in a spacious and lofty chamber well lighted from above by a large open space, through which can be seen the entrance to the upper set of caves, some 400 to 500 feet up the hill side. In this chamber is a large deposit of guano, formed principally by the myriads of bats inhabiting the caves in joint occupancy with the edible-nest-forming swifts. Passing through this first chamber and turning a little to the right you come to a porch leading into an extensive cave, which extends under the upper series. This cave is filled half way up to its roof, with an enormous deposit of guano, which has been estimated to be 40 to 50 feet in depth. How far the cave extends has not been ascertained, as its exploration, until some of the deposit is removed, would not be an easy task, for the explorer would be compelled to walk along on the top of the guano, which in some places is so soft that you sink in it almost up to your waist. My friend Mr. C. A. [illegible], in whose company I first visited Gomanton, and who, as "Commissioner of Birds-nest Caves," drew up a very interesting report on them, informed me that, though he had found it impossible to explore right to the end, he had been a long way in and was confident that the cave was of very large size. To reach the upper series of caves, you leave Simud Hitam and clamber up the hill side—a steep but not difficult climb, as the jagged limestone affords sure footing. The entrance to this series, known as *Simud Putih*, or "white entrance," is estimated to be at an elevation of 300 feet above sea level, and the porch by which you enter them is about 30 feet high by about 50 wide. The floor slopes steeply downwards and brings you into an enormous cave, with smaller ones leading off it, all known to the nest collectors by their different native names. You soon come to a large black hole, which has never been explored, but which is said to communicate with the large guano cave below, which has been already described. Passing on, you enter a dome-like cave, the height of the roof or ceiling of which has been estimated at 800 feet, but for the accuracy of this guess I cannot vouch. The average height of the cave before the domed portion is reached is supposed to be about 150 feet, and Mr. BAMPFYLDE estimates the total length, from the entrance to the furthest point, at a fifth of a mile. The Simud Putih series are badly lighted, there being only a few "holes" in the roof of the dome, so that torches or lights of some kind are required. There are large deposits of guano in these caves also, which could be easily worked by lowering quantities down into the Simud Hitam caves below, the floor of which, as already stated, is on a level with the river bank, so that a tramway could be laid right into them and the guano be carried down to the port of shipment, at the mouth of the Sapa Gaia River. Samples of the guano have been sent home, and have been analysed by Messrs. VOELCKER & CO. It is rich in ammonia and nitrogen and has been valued at £5 to £7 a ton in England. The bat-guano is said to be richer as a manure than that derived from the swifts. To ascend to the top of Gomanton, one has to emerge from the Simud Putih entrance and, by means of a ladder, reach an overhanging ledge, whence a not very difficult climb brings one to the cleared summit, from which a fine view of the surrounding country is obtained, including Kina-balu, the sacred mountain of North Borneo. On this summit will be found the holes already described as helping to somewhat lighten the darkness of the dome-shaped cave, on the roof of which we are in fact now standing. It is through these holes that the natives lower themselves into the caves, by means of rattan ladders and, in a most marvellous manner, gain a footing on the ceiling and construct cane stages, by means of which they can reach any part of the roof and, either by hand or by a suitable pole to the end of which is attached a lighted candle, secure the wealth giving luxury for the epicures of China. There are two principal seasons for collecting the nests, and care has to be taken that the collection is made punctually at the proper time, before the eggs are all hatched, otherwise the nests become dirty and fouled with feathers, &c., and discoloured and injured by the damp, thereby losing much of their market value. Again, if the nests are not collected for a season, the birds do not build many new ones in the following season, but make use of the old ones, which thereby become comparatively valueless.

There are, roughly speaking, three qualities of nests, sufficiently described by their names—white, red, and black—the best quality of each fetching, at Sandakan, per catty of 1⅓ lbs., $16, $7 and 8 cents respectively.

The question as to the true cause of the difference in the nests has not yet been satisfactorily solved. Some allege that the red and black nests are simply white ones deteriorated by not having been collected in due season. I myself incline to agree with the natives that the nests are formed by different birds, for the fact that, in one set of caves, black nests are always found together in one part, and white ones in another, though both are collected with equal care and punctuality, seems almost inexplicable under the first theory. It is true that the different kinds of nests are not found in the same season, and it is just possible that the red and black nests may be the second efforts at building made by the swifts after the collectors have disturbed them by gathering their first, white ones. In the inferior nests, feathers are found *mixed up* with the gelatinous matter forming the walls, as though the glands were unable to secrete a sufficient quantity of material, and the bird had to eke it out with its own feathers. In the substance of the white nests no feathers are found.

Then, again, it is sometimes found in the case of two distinct caves, situated at no great distance apart, that the one yields almost entirely white nests, and the other nearly all red, or black ones, though the collections are made with equal regularity in each. The natives, as I have said, seem to think that there are two kinds of birds, and the Hon. R. Aber-

CROMBY reports that, when he visited Gomanton, they shewed him eggs of different size and explained that one was laid by the white-nest bird and the other by the black-nest builder. Sir HUGH LOW, in his work on Sarawak, published in 1848, asserts that there are "two different and quite dissimilar kinds of birds, though both are swallows" (he should have said swifts), and that the one which produces the white nest is larger and of more lively colours, with a white belly, and is found on the sea-coast, while the other is smaller and darker and found more in the interior. He admits, however, that though he had opportunities of observing the former, he had not been able to procure a specimen.

The question is one which should be easily settled on the spot, and I recommend it to the consideration of the authorities of the British North Borneo Museum, which has been established at Sandakan.

The annual value of the nests of Gomanton, when properly collected, has been reckoned at $23,000, but I consider this an excessive estimate. My friend Mr. A. COOK, the Treasurer of the Territory, to whose zeal and perseverance the Company owes much, has arranged with the Buludupih tribe to collect these nests on payment to the Government of a royalty of $7,500 per annum, which is in addition to the export duty at the rate of 10% *ad valorem* paid by the Chinese exporters.

The swifts and bats—the latter about the size of the ordinary English bat—avail themselves of the shelter afforded by the caves without incommoding one another, for, by a sort of Box and Cox arrangement, the former occupy the caves during the night and the latter by day.

Standing at the Simud Putih entrance about 5 P. M., the visitor will suddenly hear a whirring sound from below, which is caused by the myriads of bats issuing, for their nocturnal banquet, from the Simud Itam caves, through the wide open space that has been described. They come out in a regularly ascending continuous spiral or corkscrew coil, revolving from left to right in a very rapid and regular manner. When the top of the spiral coil reaches a certain height, a colony of bats breaks off, and continuing to revolve in a well kept ring from left to right gradually ascends higher and higher, until all of a sudden the whole detachment dashes off in the direction of the sea, towards the mangrove swamps and the *nipas*. Sometimes these detached colonies reverse the direction of their revolutions after leaving the main body, and, instead of from left to right, revolve from right to left. Some of them continue for a long time revolving in a circle, and attain a great height before darting off in quest of food, while others make up their minds more expeditiously, after a few revolutions. Amongst the bats, three white ones were, on the occasion of my visit, very conspicuous, and our followers styled them the Raja, his wife and child. Hawks and sea-eagles are quickly attracted to the spot, but only hover on the outskirts of the revolving coil, occasionally snapping up a prize. I also noticed several hornbills, but they appeared to have been only attracted by curiosity. Mr BAMPFYLDE informed me that, on a previous visit, he had seen a large green snake settled on an overhanging branch near which the bats passed and that occasionally he managed to secure a victim. I timed the bats and found that they took almost exactly fifty minutes to come out of the caves, a thick stream of them issuing all that time and at a great pace, and the reader can endeavour to form for himself some idea of their vast numbers. They had all got out by ten minutes to six in the evening, and at about six o'clock the swifts began to come home to roost. They came in in detached, independent parties, and I found it impossible to time them, as some of them kept very late hours. I slept in the Simud Putih cave on this occasion, and found that next morning the bats returned about 5 A.M., and that the swifts went out an hour afterwards.

As shewing the mode of formation of these caves, I may add that I noticed, imbedded in a boulder of rock in the upper caves, two pieces of coral and several fossil marine shells, bivalves and others.

The noise made by the bats going out for their evening promenade resembled a combination of that of the surf breaking on a distant shore and of steam being gently blown off from a vessel which has just come to anchor.

There are other interesting series of caves, and one—that of Madai, in Darvel Bay on the East coast—was visited by the late Lady BRASSEY and Miss BRASSEY in April, 1887, when British North Borneo was honoured by a visit of the celebrated yacht the *Sunbeam*, with Lord BRASSEY and his family on board.

I accompanied the party on the trip to Madai, and shall not easily forget the pluck and energy with which Lady BRASSEY, then in bad health, surmounted the difficulties of the jungle track, and insisted upon seeing all that was to be seen; or the gallant style in which Miss BRASSEY unwearied after her long tramp through the forest, led the way over the slippery boulders in the dark caves.

The Chinese ascribe great strengthening powers to the soup made of the birds'-nests, which they boil down into a syrup with barley sugar, and sip out of tea cups. The gelatinous looking material of which the substance of the nests is composed is in itself almost flavourless.

It is also with the object of increasing their bodily powers that these epicures consume the uninviting sea-slug or bêche-de-mer, and dried sharks'-fins and cuttle fish.

To conclude my brief sketch of Sandakan Harbour and of the Capital, it should be stated that, in addition to being within easy distance of Hongkong, it lies but little off the usual route of vessels proceeding from China to Australian ports, and can be reached by half a day's deviation of the ordinary track.

Should, unfortunately, war arise with Russia, there is little doubt their East Asiatic squadron would endeavour both to harass the Australian trade and to damage, as much as possible, the coast towns, in which case the advantages of Sandakan, midway between China and Australia, as a base of operations for the British protecting fleet would at once become manifest. It is somewhat unfortunate that a bar has formed just outside the entrance of the harbour, with a depth of water of four fathoms at low water, spring tides, so that ironclads of the largest size would be denied admittance.

There are at present, no steamers sailing direct from Borneo to England, and nearly all the commerce from British North Borneo ports is carried by local steamers to that great emporium of the trade of the Malayan countries, Singapore, distant from Sandakan a thousand miles, and it is a curious fact, that though many of the exports are ultimately intended for the China market, *e.g.*, edible birds'-nests, the Chinese traders find it pays them better to send their produce to Singapore in the first instance, instead of direct to Hongkong. This is partly accounted for by the further fact that, though the Government has spent considerable sum in endeavouring to attract Chinamen from China, the large proportion of our Chinese traders and of the Chinese population generally has come to us *viâ* Singapore, after as it were having undergone there an education in the knowledge of Malayan affairs.

As further illustrating the commercial and strategical advantages of the harbours of British North Borneo, it should be noted that the course recommended by the Admiralty instructions for vessels proceeding to China from the Straits, *viâ* the Palawan passage, brings them within ninety miles of the harbours of the West Coast.

As to postal matters, British North Borneo, though not in the Postal Union, has entered into arrangements for the exchange of direct closed mails with the English Post Office, London, with which latter also, as well as with Singapore and India, a system of Parcel Post and of Post Office Orders has been established.

The postal and inland revenue stamps, distinguished by the lion, which has been adopted as the Company's badge, are well executed and in considerable demand with stamp collectors, owing to their rarity.

The Government also issues its own copper coinage, one cent and half-cent pieces, manufactured in Birmingham and of the same intrinsic value as those of Hongkong and the Straits Settlements.

The revenue derived from its issue is an important item to the Colony's finances, and considerable quantities have been put into circulation, not only within the limits of the Company's territory, but also in Brunai and in the British Colony of Labuan, where it has been proclaimed a legal tender on the condition of the Company, in return for the profit which they reap by its issue in the island, contributing to the impoverished Colonial Treasury the yearly sum of $3,000.

Trade, however, is still, to a great extent, carried on by a system of barter with the Natives. The primitive currency medium in vogue under the native regime has been described in the Chapters on Brunai.

The silver currency is the Mexican and Spanish Dollar and the Japanese Yen, supplemented by the small silver coinage of the Straits Settlements. The Company has not yet minted any silver coinage, as the profit thereon is small, but in the absence of a bank, the Treasury, for the convenience of traders and planters, carries on banking business to a certain extent, and issues bank notes of the values of $1, $5 and $25, cash reserves equal to one-third of the value of the notes in circulation being maintained.*

Sir ALFRED DENT is taking steps to form a Banking Company at Sandakan, the establishment of which would materially assist in the development of the resources of the territory.

British North Borneo is not in telegraphic communication with any part of the world, except of course through Singapore, nor are there any local telegraphs. The question, however, of supplementing the existing cable between the Straits Settlements and China by another touching at British territory in Borneo has more than once been mooted, and may yet become a *fait accompli.* The Spanish Government appear to have decided to unite Sulu by telegraphic communication with the rest of the world, *viâ* Manila, and this will bring Sandakan within 180 miles of the telegraphic station.

CHAPTER IX.

In the eyes of the European planter, British North Borneo is chiefly interesting as a field for the cultivation of tobacco, in rivalry to Sumatra, and my readers may judge of the importance of this question from a glance at the following figures, which shew the dividends declared of late years by three of the principal Tobacco Planting Companies in the latter island :—

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* Agencies of Singapore Banks have since been established at Sandakan.

In	Dividends paid by		
	The Deli Maatschappi.	The Tabak Maatschappi.	The Amsterdam Deli Co.
1882	65 per cent ...	25 per cent. ...	10 per cent.
1883	101 „ .	50 „ ..	30 „
1884	77 „ .	60 „ ..	30 „
1885	107 „ .	100 „ ...	60 „
1886	108 „	...	......

In Sumatra, under Dutch rule, tobacco culture can at present only be carried on in certain districts, where the soil is suitable and where the natives are not hostile, and, as most of the best land has been taken up, and planters are beginning to feel harassed by the stringent regulations and heavy taxation of the Dutch Government, both Dutch and German planters are turning their attention to British North Borneo, where they find the regulations easier, and the authorities most anxious to welcome them, while, owing to the scanty population, there is plenty of available land. It is but fair to say that the first experiment in North Borneo was made by an English, or rather an Anglo-Chinese Company, the China-Sabah Land Farming Company, who, on hurriedly selected land in Sandakan and under the disadvantages which usually attend pioneers in a new country, shipped a crop to England which was pronounced by experts in 1886 to equal in quality the best Sumatra-grown leaf. Unfortunately, this Company, which had wasted its resources on various experiments, instead of confining itself to tobacco planting, was unable to continue its operations, but a Dutch planter from Java, Count GELOES D'ELSLOO, having carefully selected his land in Marudu Bay, obtained, in 1887, the high average of $1 per lb. for his trial crop at Amsterdam, and, having formed an influential Company in Europe, is energetically bringing a large area under cultivation, and has informed me that he confidently expects to rival Sumatra, not only in quality, but also in quantity of leaf per acre, as some of his men have cut twelve pikuls per field, whereas six pikuls per field is usually considered a good crop. The question of "quantity" is a very important one, for quality without quantity will never pay on a tobacco estate. Several Dutchmen have followed Count **GELOES'** example, and two German Companies and one British are now at work in the country. Altogether, fully 350,000 acres* of land have been taken up for tobacco cultivation in British North Borneo up to the present time.

In selecting land for this crop, climate, that is, temperature and rainfall, has equally to be considered with richness of soil. For example, the soil of Java is as rich, or richer than that of Sumatra, but owing to its much smaller rainfall, the tobacco it produces commands nothing like the prices fetched by that of the former. The seasons and rainfall in Borneo are found to be very similar to those of Sumatra. The average recorded annual rainfall at Sandakan for the last seven years is given by Dr. **WALKER**, the Principal Medical Officer, as 124.34 inches, the range being from 156.9 to 101.26 inches per annum.

Being so near the equator, roughly speaking between N. Latitudes 4 and 7, North Borneo has, unfortunately for the European residents whose lot is cast there, nothing that can be called a winter, the temperature remaining much about the same from year's end to year's end. It used to seem to me that during the day the thermometer was generally about 83 or 85 in the shade, but, I believe, taking the year all round, night and day, the mean temperature is 81, and the extremes recorded on the coast line are 67.5 and 94.5. Dr. **WALKER** has not yet extended his stations to the hills in the interior, but mentions it as probable that freezing point is occasionally reached near the top of the Kinabalu Mountains, which is 13,700 feet high; he adds that the lowest recorded temperature he has found is 36.5, given by Sir **SPENCER ST. JOHN** in his "Life in the Forests of the Far East." Snow has never been reported even on Kinabalu, and I am informed that the Charles Louis Mountains in Dutch New Guinea, are the only ones in tropical Asia where the limit of perpetual snow is attained. I must stop to say a word in praise of Kinabalu, "the Chinese Widow,"* the sacred mountain of North Borneo whither the souls of the righteous Dusuns ascend after death. It can be seen from both coasts, and appears to rear its isolated, solid bulk almost straight out of the level country, so dwarfed are the neighbouring hills by its height of 13,680 feet. The best view of it is obtained, either at sunrise or at sunset, from the deck of a ship proceeding along the West Coast, from which it is about twenty miles inland. During the day time the Widow, as a rule, modestly veils her features in the clouds.

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* Governor **CREAGH** tells me 600,000 acres have now been taken up.

The effect when its huge mass is lighted up at evening by the last rays of the setting sun is truly magnificent.

On the spurs of Kinabalu and on the other lofty hills, of which there is an abundance, no doubt, as the country becomes opened up by roads many suitable sites for sanitoria will be discovered, and the day will come when these hill sides, like those of Ceylon and Java, will be covered with thriving plantations.

Failing winter, the Bornean has to be content with the the change afforded by a dry and a wet season, the latter being looked upon as the "winter," and prevailing during the month of November, December and January. But though the two seasons are sufficiently well defined and to be depended upon by planters, yet there is never a month during the dry season when no rain falls, nor in the wet season are fine days at all rare. The dryest months appear to be March and April, and in June there generally occurs what Doctor WALKER terms an "intermediate" and moderately wet period.

Tobacco is a crop which yields quick returns, for in about 110 to 120 days after the seed is sown the plant is ripe for cutting. The *modus operandi* is somewhat after this fashion. First select your land, virgin soil covered with untouched jungle, situated at a distance from the sea, so that no salt breezes may jeopardise the proper burning qualities of the future crop, and as devoid as possible of hills. Then, a point of primary importance which will be again referred to, engage your Chinese coolies, who have to sign agreements for fixed periods, and to be carefully watched afterwards, as it is the custom to give them cash advances on signing, the repayment of which they frequently endeavour to avoid by slipping away just before your vessel sails and probably engaging themselves to another master.

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* For the native derivation of this appellation see page 66 of Journal No. 20.

Without the Chinese cooly, the tobacco planter is helpless, and if the proper season is allowed to pass, a whole year may be lost. The Chinaman is too expensive a machine to be employed on felling the forest, and for this purpose, indeed, the Malay is more suitable and the work is accordingly given him to do under contract. Simultaneously with the felling, a track should be cut right through the heart of the estate by the natives, to be afterwards ditched and drained and made passable for carts by the Chinese coolies.

That as much as possible of the felled jungle should be burned up is so important a matter and one that so greatly affects the individual Chinese labourer, that it is not left to the Malays to do, but, on the completion of the felling, the whole area which is to be planted is divided out into "fields," of about one acre each, and each "field" is assigned by lot to a Chinese cooly, whose duty it is to carefully burn the timber and plant, tend and finally cut the tobacco on his own division, for which he is remunerated in accordance with the quality and quantity of the leaf he is able to bring into the drying sheds. Each "field," having been cleared as carefully as may be of the felled timber, is next thoroughly hoed up, and a small "nursery" prepared in which the seeds provided by the manager are planted and protected from rain and sun by palm leaf mats (*kajangs*) raised on sticks. In about a week, the young plants appear, and the Chinese tenant, as I may call him, has to carefully water them morning and evening. As the young seedlings grow up, their enemy, the worms and grubs, find them out and attack them in such numbers that at least once a day, sometimes oftener, the anxious planter has to go through his nursery and pick them off, otherwise in a short time he would have no tobacco to plant out. About thirty days after the seed has been sown, the seedlings are old enough to be planted out in the field, which has been all the time carefully prepared for their reception. The first thing to be done is to make holes in the soil, at distances of two feet one way and three feet the other, the earth in them being loosened and broken up so that the tender roots should meet with no obstacles to their growth. As the holes are ready for them, the seedlings are taken from the nursery and planted out, being protected from the sun's rays either by fern, or coarse grass, or, in the best managed estates, by a piece of wood, like a roofing shingle, inserted in the soil in such a way as to provide the required shelter. The watering has to be continued till the plants have struck root, when the protecting shelter is removed and the earth banked up round them, care being taken to daily inspect them and remove the worms which have followed them from the nursery. The next operation is that of "topping" the plants, that is, of stopping their further growth by nipping off the heads.

According to the richness of the soil and the general appearance of the plants, this is ordered to be done by the European overseer after a certain number of leaves have been produced. If the soil is poor, perhaps only fourteen leaves will be allowed, while on the richest land the plant can stand and properly ripen as many as twenty-four leaves. The signs of ripening, which generally takes place in about three months from the date of transplantation, are well known to the overseers and are first shewn by a yellow tinge becoming apparent at the tips of the leaves.

The cooly thereupon cuts the plants down close to the ground and lightly and carefully packs them into long baskets so as not to injure the leaves, and carries them to the drying sheds. There they are examined by the overseer of his division, who credits him with the value, based on the quantity and quality of the crop he brings in, the price ranging from $1 up to $8 per thousand trees. The plants are then tied in rows on sticks, heads downwards, and hoisted up in tiers to dry in the shed.

After hanging for a fortnight, they are sufficiently dry and, being lowered down, are stripped of their leaves, which are tied up into small bundles, similar leaves being roughly sorted together.

The bundles of leaves are then taken to other sheds, where the very important process of fermenting them is carried out. For this purpose, they are put into orderly arranged heaps—small at first, but increased in size till very little heat is given out, the heat being tested by a thermometer, or even an ordinary piece of stick inserted into them. When the fermentation is nearly completed and the leaves have attained a fixed colour, they are carefully sorted according to colour, spottiness and freedom from injury of any kind. The price realized in Europe is greatly affected by the care with which the leaves have been fermented and sorted. Spottiness is not always considered a defect, as it is caused by the sun shining on the leaves when they have drops of rain on them, and to this the best leaves are liable; but spotted leaves, broken leaves and in short leaves having the same characteristics should be carefully sorted together. After this sorting is completed as regards class and quality, there is a further sorting in regard to length, and the leaves are then tied together in bundles of thirty-five. These bundles are put into large heaps and, when no more heating is apparent, they are ready to be pressed under a strong screw press and sewn up in bags which are carefully marked and shipped off to Europe—to Amsterdam as a rule.

As the coolies' payment is by "results," it is their interest to take the greatest care of their crops; but for any outside work they may be called on to perform, and for their services as sorters, etc. in the sheds, they are paid extra. During the whole time, also, they receive, for "subsistence" money, $4 or $3 a month. At the end of the season their accounts are made up, being debited with the amount of the original advance, subsistence money and cost of implements, and credited with the value of the tobacco brought in and any wages that may be due for outside work. Each estate possesses a hospital, in which bad cases are treated by a qualified practitioner, while in trifling cases the European overseer dispenses drugs, quinine being that in most demand. If, owing to sickness, or other cause, the cooly has required assistance in his field, the cost thereof is deducted in his final account.

The men live in well constructed "barracks," erected by the owner of the estate, and it is one of the duties of the Chinese "tindals," or overseers acting under the Europeans to see that they are kept in a cleanly, sanitary condition.

The European overseers are under the orders of the head manager, and an estate is divided in such a way that each overseer shall have under his direct control and be responsible for the proper cultivation of about 100 fields. He receives a fixed salary, but his interest in his division is augmented by the fact that he will receive a commission on the value of the crop it produces. His work is onerous and, during the season, he has little time to himself, but should be here, there, and everywhere in his division, seeing that the coolies come out to work at the stated times, that no field is allowed to get in a backward state, and that worms are carefully removed, and, as a large proportion of the men are probably *sinkehs*, that is, new arrivals who have never been on a tobacco estate before, he has, with the assistance of the tindals, to instruct them in their work. When the crop is brought in, he has to examine each cooly's contribution, carefully inspecting each leaf, and keeping an account of the value and quantity of each.

Physical strength, intelligence and an innate desire of amassing dollars, are three essential qualifications for a good tobacco cooly, and, so far, they have only been found united in the Chinaman, the European being out of the question as a field-labourer in the tropics.

The coolies are, as a rule, procured through Chinese cooly brokers in Penang or Singapore, but as regards North Borneo, the charges for commission, transport and the advances—many of which, owing to death, sickness and desertion, are never repaid—have become so heavy as to be almost prohibitive, and my energetic friend, Count GELOES, has set the example of procuring his coolies direct from China, instead of by the old fashioned, roundabout way of the extortionate labour-brokers of the Straits Settlements. North Borneo, it will be remembered, is situated midway between Hongkong and Singapore, and the Court of Directors of the Governing Company could do nothing better calculated to ensure the success of their public-spirited enterprise than to inaugurate regular, direct steam communication between their territory and Hongkong. In the first instance, this could only be effected by a Government subsidy or guarantee, but it is probable that, in a short time, a cargo and passenger traffic would grow up which would permit of the subsidy being gradually withdrawn.

Many of the best men on a well managed estate will re-engage themselves on the expiration of their term of agreement, receiving a fresh advance, and some of them can be trusted to go back to China and engage their clansmen for the estate.

In British North Borneo the general welfare of the indentured coolies is looked after by Government Officials, who act under the provisions of a law entitled "The Estate Coolies and Labourers Protection Proclamation, 1883."

Owing to the expense of procuring coolies and to the fact that every operation of tobacco planting must be performed punctually at the proper season of the year, and to the desirability of encouraging coolies to re-engage themselves, it is manifestly the planters' interest to treat his employés well, and to provide, so far as possible, for their health and comfort on the estate, but. notwithstanding all the care that may be taken, a considerable amount of sickness and many deaths must be allowed for on tobacco estates, which, as a rule, are opened on virgin soil; for, so long as there remains any untouched land on his estate, the planter rarely makes use of land off which a crop has been taken.

In North Borneo the jungle is generally felled towards the end of the wet season, and planting commences in April or May. The Native Dusun, Sulu and Brunai labour is available for jungle-felling and house-building, and *nibong* palms for posts and *nipa* palms for thatch, walls and *kajangs* exist in abundance.

Writing to the Court of Directors in 1884 I said :—"The experiment in the Suanlambah conclusively proves so far that this country will do for tobacco.* * * * There seems every reason to conclude that it will do as well here as in Sumatra. When this fact becomes known, I presume there will be quite a small rush to the country, as the Dutch Government, I hear, is not popular in Sumatra, and land available for tobacco there is becoming scarcer."

My anticipations have been verified, and the rush is already taking place.

The localities at present in favour with tobacco planters are Marudu Bay and Banguey Island in the North, Labuk Bay and Darvel Bay in the neighbourhood of the Silam Station, and the Kinabatangan River on the East

The firstcomers obtained their land on very easy terms, some of them at 30 cents an acre, but the Court has now issued an order that in future no planting land is to be disposed of for a less sum than $1* per acre, free of quit-rent and on a lease for 999 years, with clauses providing that a certain proportion be brought under cultivation.

At present no export duty is levied on tobacco shipped from North Borneo, and the Company has engaged that no such duty shall be imposed before the 1st January, 1892, after which date it will be optional with them to levy an export royalty at the rate of one dollar cent, or a halfpenny, per lb., which rate, they promise, shall not be exceeded during the succeeding twenty years.

The tobacco cultivated in Sumatra and British North Borneo is used chiefly for wrappers for cigars, for which purpose a very fine, thin, elastic leaf is required and one that has a good colour and will burn well and evenly, with a fine white ash. This quality of leaf commands a much higher price than ordinary kinds, and, as stated, Count GELOES' trial crop, from the Ranan Estate in Marudu Bay, averaged 1.83 guilders, or about $1 (3/2) per lb. It is said that 2 lbs. or 2½ lbs. weight of Bornean tobacco will cover 1,000 cigars.

Tobacco is not a new culture in Borneo, as some of the hill natives on the West Coast of North Borneo have grown it in a rough and ready way for years past, supplying the population of Brunai and surrounding districts with a sun-dried article, which used to be preferred to that produced in Java. The Malay name for tobacco is *tambako*, a corruption of the

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* Raised in 1890 to $6 an acre.

Spanish and Portuguese term, but the Brunai people also know it as *sigup*.

It was probably introduced into Malay countries by the Portuguese, who conquered Malacca in 1511, and by the Spanish, who settled in the Philippines in 1565. Its use has become universal with men, women and children, of all tribes and of all ranks. The native mode of using tobacco has been referred to in my description of Brunai.

Fibre-yielding plants are also now attracting attention in North Borneo, especially the Manila hemp (*Musa textilis*) a species of banana, and pine-apples, both of which grow freely. The British Borneo Trading and Planting Company have acquired the patent for Borneo of DEATH'S fibre-cleaning machines, and are experimenting with these products on a considerable scale and, apparently, with good prospects of success.* For a long time past, beautiful cloths have been manufactured of pine-apple fibre in the Philippines, and as it is said that orders have been received from France for Borneo pine-apple fibre, we shall perhaps soon see it used in England under the name of French *silk*.

In the Government Experimental Garden at Silam, in Darvel Bay, cocoa, cinnamon and Liberian coffee have been found to do remarkably well. Sappan-wood and *kapok* or cotton flock also grow freely.

CHAPTER X.

Many people have a very erroneous idea of the objects and intentions of the British North Borneo Company. Some, with a dim recollection of untold wealth having been extracted from the natives of India in the early days of the Honourable East India Company, conceive that the Company can have no other object than that of fleecing our natives in order to pay dividends; but the old saying, that it is a difficult matter to steal a Highlander's pantaloons, is applicable to North Borneo, for only a magician could extract anything much worth having in the shape of loot from the easy going natives of the country, who, in a far more practical sense than the Christians of Europe, are ready to say "sufficient for the day is the evil thereof," and who do not look forward and provide for the future, or heap up riches to leave to their posterity.

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* The anticipated success has not been achieved as yet.

Some years ago, a correspondent of an English paper displayed his ignorance on the matter by maintaining that the Company coerced the natives and forced them to buy Manchester goods at extortionate prices. An Oxford Don, when I first received my appointment as Governor, imagined that I was going out as a sort of slave-driver, to compel the poor natives to work, without wages, on the Company's plantations. But, as a matter of fact, though entitled to do so by the Royal Charter, the Company has elected to engage neither in trade nor in planting, deeming that their desire to attract capital and population to their territory will be best advanced by their leaving the field entirely open to others, for otherwise there would always have been a suspicion that rival traders and planters were handicapped in the race with a Company which had the making and the administration of laws and the imposition of taxation in its hands.

It will be asked, then, if the Company do not make a profit out of trading, or planting, or mining, what could have induced them to undertake the Government of a tropical country, some 10,000 miles or more distant from London, for Englishmen, as a rule, do not invest hundreds of thousands of pounds with the philanthropic desire only of benefitting an Eastern race?

The answer to this question is not very plainly put in the Company's prospectus, which states that its object "is the carrying on of the work begun by the Provisional Association" (said in the previous paragraphs of the prospectus to have been the successful accomplishment of the *completion* of the pioneer work) "and the further improvement and full utilization of the vast natural resources of the country, by the introduction of new capital and labour, which they intend shall be stimulated, aided and protected by a just, humane and enlightened Government. The benefits likely to flow from the accomplishment of this object, in the opening up of new fields of tropical agriculture, new channels of enterprise, and new markets for the world's manufactures, are great and incontestable." I quite agree with the framer of the prospectus that these benefits are great and incontestable, but then they would be benefits conferred on the world at large at the expense of the shareholders of the Company, and I presume that the source from which the shareholders are to be recouped is the surplus revenues which a wisely administered Government would ensure, by judiciously fostering colonisation, principally by Chinese, by the sale of the vast acreages of "waste" or Government lands, by leasing the right to work the valuable timber forests and such minerals as may be found to exist in workable quantities, by customs duties and the "farming out" of the exclusive right to sell opium, spirits, tobacco, etc., and by other methods of raising revenue in vogue in the Eastern Colonies of the Crown. In fact, the sum invested by the shareholders is to be considered in the light of a loan to the Colony—its public debt—to be repaid with interest as the resources of the country are developed. Without encroaching on land worked, or owned by the natives, the Company has a large area of unoccupied land which it can dispose of for the highest price obtainable. That this must be the case is evident from a comparison with the Island of Ceylon, where Government land sales are still held. The area of North Borneo, it has been seen, is larger than that of Ceylon, but its population is only about 160,000, while that of Ceylon is returned as 2,825,000; furthermore, notwithstanding this comparatively large population, it is said that the land under cultivation in Ceylon forms only about one-fifth of its total area. From what I have said of the prospects of tobacco-planting in British North Borneo, it will be understood that land is being rapidly taken up, and the Company will soon be in a position to increase its selling price. Town and station lands are sold under different conditions to that for planting purposes, and are restricted as a rule to lots of the size of 66 feet by 33 feet. The lease is for 999 years, but there is an annual quit-rent at the rate of $6 per lot, which is redeemable at fifteen years' purchase. At Sandakan, lots of this size have at auction realized a premium of $350. In all cases, coal, minerals, precious stones, edible nests and guano are reserved to the Government, and, in order to protect the native proprietors, it is provided that any foreigner desirous of purchasing land from a native must do so through the Government.

Titles and mutations of titles to land are carefully registered and recorded in the Land Office, under the provisions of the Hongkong Registration of Documents Ordinance, which has been adopted in the State.

The local Government is administered by a Governor, selected by the Court of Directors subject to the approval of the Secretary of State for the Colonies. He is empowered to enact laws, which require confirmation by the Court, and is assisted in his executive functions by a Government Secretary, Residents, Assistant Residents, a Treasurer-General, a Commissioner of Lands, a Superintendent of Public Works, Commandant, Postmaster-General and other Heads of Departments usually to be found in Crown Colonies, and the British Colonial Regulations are adhered to as closely as circumstances admit. The title of Resident is borrowed from the Dutch Colonies, and the duties of the post are analogous to those of the Resident Councillors of Penang or Malacca, under the Governor of Singapore, or of the Government Agents in Ceylon. The Governor can also call to assist him in his deliberations a Council of Advice, composed of some of the Heads of Departments and of natives of position nominated to seats therein.

The laws are in the form of "Proclamations" issued by the Governor under the seal of the Territory. Most of the laws are adaptations, in whole or in part, of Ordinances enacted in Eastern Colonies, such as the Straits Settlements, Hongkong, Labuan and Fiji.

The Indian Penal Code, the Indian Codes of Civil and Criminal Procedure and the Indian Evidence and Contract Acts have been adopted in their entirety, "so far as the same shall be applicable to the circumstances of this Territory.

The Proclamation making these and other Acts the law in North Borneo was the first formal one issued, and bears date the 23rd December, 1881.

The law relating to the protection of estate coolies and labourers has been already referred to.

The question of domestic slavery was one of the first with which the Company had to grapple, the Royal Charter having ordained that "the Company shall to the best of its power discourage and, as far as may be practicable, abolish by degrees, any system of domestic servitude existing among the tribes of the Coast or interior of Borneo; and no foreigners whether European, Chinese or other, shall be allowed to own slaves of any kind in the Company's territories." Slavery and kidnapping were rampant in North Borneo under native regime and were one of the chief obstacles to the unanimous acceptance of the Company's rule by the Chiefs. At first the Residents and other officers confined their efforts to prohibiting the importation of slaves for sale, and in assisting slaves who were ill-treated to purchase their liberty. In 1883, a Proclamation was issued which will have the effect of gradually abolishing the system, as required by the Charter. Its chief provisions are as follows:—No foreigners are allowed to hold slaves, and no slaves can be imported for sale, nor can the natives buy slaves in a foreign country and introduce them into Borneo *as slaves*, even should there be no intention of selling them as such. Slaves taking refuge in the country from abroad will not be surrendered, but slaves belonging to natives of the country will be given up to their owners unless they can prove ill-treatment, or that they have been brought into the territory subsequently to the 1st November, 1883, and it is optional for any slave to purchase his or her freedom by payment of a sum, the amount of which is to be fixed, from time to time, by the Government.

A woman also becomes free if she can prove that she has cohabited with her master, or with any person other than her husband, with the connivance of her master or mistress; and finally "all children born of slave parents after the first day of November, 1883, and who would by ancient custom be deemed to be slaves, are hereby proclaimed to be free, and any person treating or attempting to treat any such children as slaves shall be guilty of an offence under this Proclamation." The punishment for offences against the provisions of this Proclamation extends to imprisonment for ten years and to a fine up to five thousand dollars.

The late Mr. WITTI, one of the first officers of the Association, at my request, drew up, in 1881, an interesting report on the system of Slavery in force in the Tampassuk District, on the West Coast, of which the following is a brief summary. Slaves in this district are divided into two classes—those who are slaves in a strict and rigorous sense, and those whose servitude is of a light description. The latter are known as *anak mas*, and are the children of a slave mother by a free man other than her master. If a female, she is the slave or *anak mas* of her mother's master, but cannot be sold by him; if a boy, he is practically free, cannot be sold and, if he does not care to stay with his master, can move about and earn his own living, not sharing his earnings with his master, as is the case in some other districts. In case of actual need, however, his master can call upon him for his services.

If an an *anak mas* girl marries a freeman, she at once becomes a free woman, but a *brikan*, or marriage gift, of from two to two and a half pikuls of brass gun—valued at $20 to $25 a pikul—is payable by the bridegroom to the master.

If she marry a slave, she remains an *anak mas*, but such cases are very rare and only take place when the husband is in a condition to pay a suitable *brikan* to the owner.

If an ordinary slave woman becomes *enceinte* by her owner, she and her offspring are henceforth free and, she may remain as one of her late master's wives. But the jealousy of the inmates of the harem often causes abortion to be procured.

The slaves, as a rule, have quite an easy time of it, living with and, as their masters, sharing the food of the family and being supplied with tobacco, betel-nut and other native luxuries. There is no difference between them and free men in the matter of dress, and in the arms which all carry, and the mere fact that they are allowed to wear arms is pretty conclusive evidence of their not being bullied or oppressed.

They assist in domestic duties and in the operations of harvest and trading and so forth, but there is no such institution as a slave-gang, working under task masters, a picture which is generally present to the Englishman's mind when he hears of the existence of slavery. The slave gang was an institution of the white slave-owner. Slave couples, provided they support themselves, are allowed to set up house and cultivate a patch of land.

For such minor offences as laziness and attempting to escape, the master can punish his slaves with strokes of the rattan, but if an owner receives grave provocation and kills his slave, the matter will probably not be taken notice of by the elders of the village.

An incorrigible slave is sometimes punished by being sold out of the district.

If a slave is badly treated and insufficiently provided with food, his offence in endeavouring to escape is generally condoned by public opinion. If a slave is, without sufficient cause, maltreated by a freeman, his master can demand compensation from the agressor. Slaves of one master can, with their owner's consent, marry, and no *brihan* is demanded, but if they belong to different masters, the woman's master is entitled to a *brihan* of one pikul, equal to $20 or $25. They continue to be the slaves of their respective masters, but are allowed to live together, and in case of a subsequent separation they return to the houses of their masters. Should a freeman, other than her master, wish to marry a slave, he practically buys her from her owner with a *brihan* of $60 or $75.

Sometimes a favourite slave is raised to a position intermediate between that of an ordinary slave and an *anak mas*, and is regarded as a brother, or sister, father, mother, or child; but if he or she attempt to escape, a reversion to the condition of an ordinary slave is the result. Occasionally, slaves are given their freedom in fulfilment of a vow to that effect made by the master in circumstances of extreme danger, experienced in company with the slave.

A slave once declared free can never be claimed again by his former master.

Debts contracted by a slave, either in his own name, or in that of his master, are not recoverable.

By their own extra work, after performing their service to their owners, slaves can acquire private property and even themselves purchase and own slaves.

Infidel slaves, of both sexes, are compulsorily converted to Muhammadanism and circumcized and, even though they should recover their freedom, they seldom relapse.

There are, or rather were, a large number of debt slaves i[illegible] North Borneo. For a debt of three pikuls—$60 to $75—a man might be enslaved if his friends could not raise the requisite sum, and he would continue to be a slave until the debt was paid, but, as a most usurious interest was charged, it was almost always a hopeless task to attempt it.

Sometimes an inveterate gambler would sell himself to pay off his debts of honour, keeping the balance if any.

The natives, regardless of the precepts of the Koran, would purchase any slaves that were offered for sale, whether infidel or Muhammadan. The importers were usually the Illanun and Sulu kidnappers, who would bring in slaves of all tribes—Bajaus, Illanuns, Sulus, Brunais, Manilamen, natives of Palawan and natives of the interior of Magindanau—all was fish that came into their net. The selling price was as follows:—A boy, about 2 pikuls, a man 3 pikuls. A girl, 3 to 4 pikuls, a young woman, 3 to 5 pikuls. A person past middle age about 1½ pikuls. A young couple, 7 to 8 pikuls, an old couple, about 5 pikuls. The pikul was then equivalent to $20 or $25. Mr. WITTI further stated that in Tampassuk the proportion of free men to slaves was only one in three, and in Marudu Bay only one in five. In Tampassuk there were more female than male slaves.

Mr A. H. EVERETT reported that, in his district of Pappar-Kimanis, there was no slave *trade*, and that the condition of the domestic slaves was not one of hardship.

Mr. W B. PRYER, speaking for the East Coast, informed me that there were only a few slaves in the interior, mostly Sulus who had been kidnapped and sold up the rivers. Among the Sulus of the coast, the relation was rather that of follower and lord than of slave and master. When he first settled at Sandakan, he could not get men to work for him for wages, they deemed it *degrading* to do so, but they said they would work for him if he would *buy* them! Sulu, under Spanish influence, and Bulungan, in Dutch Borneo, were the chief slave markets, but the Spanish and Dutch are gradually suppressing this traffic.

There was a colony of Illanuns and Balinini settled at Tunku and Teribas on the East Coast, who did a considerable business in kidnapping, but in 1879 Commander E. EDWARDS, in H. M. S. *Kestrel*, attacked and burnt their village, capturing and burning several piratical boats and prahus.

Slavery, though not yet extinct in Borneo, has received a severe check in British North Borneo and in Sarawak, and is rapidly dying out in both countries; in fact it is a losing business to be a slave-owner now.

Apart from the institution of slavery, which is sanctioned by the Muhammadan religion, the religious customs and laws of the various tribes "especially with respect to the holding, "possession, transfer and disposition of lands and goods, and "testate or intestate succession thereto, and marriage, divorce "and legitimacy, and the rights of property and personal "rights" are carefully regarded by the Company's Government, as in duty bound, according to the terms of Articles 8 and 9 of the Royal Charter. The services of native headmen are utilised as much as possible, and Courts composed of Native Magistrates have been established, but at the same time efforts are made to carry the people with the Government in ameliorating and advancing their social position, and thus involves an amendment of some of the old customs and laws.

Moreover, customs which are altogether repugnant to modern ideas are checked or prohibited by the new Government; as, for example, the time-honoured custom of a tribe periodically balancing the account of the number of heads taken or lost by it from or to another tribe, an audit which, it is strange to say, almost invariably results in the discovery on the part of the stronger tribe that they are on the wrong side of the account and have a balance to get from the others. These hitherto interminable feuds, though not altogether put a stop to in the interior, have been in many districts effectually brought to an end, Government officers having been asked by the natives themselves to undertake the examination of the accounts and the tribe who was found to be on the debtor side paying, not human heads, but compensation in goods at a fixed rate per head due. Another custom which the Company found it impossible to recognise was that of *sumungap*, which was, in reality, nothing but a form of human sacrifice, the victim being a slave bought for the purpose, and the object being to send a message to a deceased relative. With this object in view, the slave used to be bound and wrapped in cloth, when the relatives would dance round him and each thrust a spear a short way into his body, repeating, as he did so, the message which he wished conveyed. This operation was performed till the slave succumbed.

The Muhammadan practice of cutting off the hair of a woman convicted of adultery, or of men flogging her with a rattan, and that of cutting off the head of a thief, have also not received the recognition of the Company's Government.

It has been shewn that the native population of North Borneo is very small, only about five to the square mile, and as the country is fertile and well-watered and possesses, for the tropics, a healthy climate, there must be some exceptional cause for the scantiness of the population. This is to be found chiefly in the absence, already referred to, of any strong central Government in former days, and to the consequent presence of all forms of lawlessness, piracy, slave-trading, kidnapping and head-hunting.

In more recent years, too, cholera and small-pox have made frightful ravages amongst the natives, almost annihilating some of the tribes, for the people knew of no remedies and, on the approach of the scourge, deserted their homes and their sick and fled to the jungle, where exposure and privation rendered them more than ever liable to the disease. Since the Company's advent, efforts are being successfully made to introduce vaccination, in which most of the people now have confidence.

This fact of a scanty native population has, in some ways, rendered the introduction of the Company's Government a less arduous undertaking than it might otherwise have proved, and has been a fortunate circumstance for the shareholders, who have the more unowned and virgin land to dispose of.

In British North Borneo, luckily for the Company, there is not, as there is in Sarawak, any one large, powerful tribe, whose presence might have been a source of trouble, or even of danger to the young Government, but the aborigines are split up into a number of petty tribes, speaking very distinct dialects and, generally, at enmity amongst themselves, so that a general coalition of the bad elements amongst them is impossible.

The institution and amusement of head-hunting appears never to have been taken up and followed with so much energy and zeal in North Borneo as among the Dyaks of Sarawak. I do not think that it was as a rule deemed absolutely essential with any of our tribes that a young man should have taken at least a head or two before he could venture to aspire to the hand of the maiden who had led captive his heart. The heads of slain enemies were originally taken by the conquerors as a substantial proof and trophy of their successful prowess, which could not be gainsaid, and it came, in time, to be considered the proper thing to be able to boast of the possession of a large number of these ghastly tokens; and so an ambitious youth, in his desire for applause, would not be particularly careful from whom, or in what manner he obtained a head, and the victim might be, not only a person with whom he had no quarrel, but even a member of a friendly tribe, and the mode of acquisition might be, not by a fair stand-up fight, a test of skill and courage, but by treachery and ambush. Nor did it make very much difference whether the head obtained was that of a man, a woman or a child, and in their petty wars it was even conceived to be an honourable distinction to bring in the heads of women and children, the reasoning being that the men of the attacked tribe must have fought their best to defend their wives and children.

The following incident, which occurred some years ago at the Colony of Labuan, serves to shew how immaterial it was whether a friend, or foe, or utter stranger was the victim. A Murut chief of the Trusan, a river on the mainland over against Labuan, was desirous of obtaining some fresh heads on the occasion of a marriage feast, and put to sea to a district inhabited by a hostile tribe. Meeting with adverse winds, his canoes were blown over to the British Colony; the Muruts landed, held apparently friendly intercourse with some of the Kadaian (Muhammadan) population and, after a visit of two or three days, made preparations to sail; but meeting a Kadaian returning to his home alone, they shot him and went off with his head—though the man was an entire stranger to them, and they had no quarrel with any of his tribe.

With the assistance of the Brunai authorities, the chief and several of his accomplices were subsequently secured and sent for trial to Labuan. The chief died in prison, while awaiting trial, but one or two of his associates paid the penalty of their wanton crime.

A short time afterwards, Mr. Cook and I visited the Lawas River for sport, and took up our abode in a Murut long house, where, I remember, a large basket of skulls was placed as an ornament at the head of my sleeping place. One night, when all our men, with the exception of my Chinese servant, were away in the jungle, trying to trap the then newly discovered "Bulwer pheasant," some Muruts from the Trusan came over and informed our hosts of the fate of their chief. On the receipt of this intelligence, all the men of our house left it and repaired to one adjoining, where a great "drink" was held, while the women indulged in a loud, low, monotonous, heart-breaking wail, which they kept up for several hours. Mr. Cook and myself agreed that things looked almost as bad for us as they well could, and when, towards morning, the men returned to our house, my Chinese boy clung to me in terror and—nothing happened! But certainly I do not think I have ever passed such an uncomfortable period of suspense.

Writing to the Court of Directors of the East India Company a hundred and thirteen years ago, Mr. Yesse, who concluded the pepper monopoly agreement with the Brunai Government, referring to the Murut predilection for head-hunting says:—"With respect to the Idaan, or Muruts, as they are called here, I cannot give any account of their disposition; but from what I have heard from the Borneyans, they are a set of abandoned idolaters; one of their tenets, so strangely inhuman, I cannot pass unnoticed, which is, that their future interest depends upon the number of their fellow creatures they have killed in any engagement, or common disputes, and count their degrees of happiness to depend on the number of human skulls in their possession; from which, and the wild, disorderly life they lead, unrestrained by any bond of civil society, we ought not to be surprised if they are of a cruel and vindictive disposition." I think this is rather a case of giving a dog a bad name.

I heard read once at a meeting of the Royal Geographical Society, an eloquent paper on the Natives of the Andaman Islands, in which the lecturer, after shewing that the Andamanese were suspicious, treacherous, blood-thirsty, ungrateful and untruthful, concluded by giving it as his opinion that they were very good fellows and in many ways superior to white man.

I do not go quite so far as he does, but I must say that many of the aborigines are very pleasant good-natured creatures, and have a lot of good qualities in them, which, with care and discriminating legislation on the part of their new rulers, might be gradually developed, while the evil qualities which they possess in common with all races of men, might be *pari passu* not extinguished, but reduced to a minimum. But this result can only be secured by officers who are naturally of a sympathetic disposition and ready to take the trouble of studying the natives and entering into their thoughts and aspirations.

In many instances, the Company has been fortunate in its choice of officials, whose work has brought them into intimate connection with the aborigines.

A besetting sin of young officers is to expect too much—they are conscious that their only aim is to advance the best interests of the natives, and they are surprised and hurt at, what they consider, the want of gratitude and backwardness in seconding their efforts evinced by them. They forget that the people are as yet in the schoolboy stage, and should try and remember how, in their own schoolboy days, they offered opposition to the efforts of their masters for *their* improvement, and how little gratitude they felt, at the time, for all that was done for them. Patience and sympathy are the two qualifications especially requisite in officers selected for the management of native affairs.

In addition to the indigenous population, there are, settled along the coast and at the mouths of the principal rivers, large numbers of the more highly civilized tribes of Malays, of whose presence in Borneo an explanation has been attempted on a previous page. They are known as Brunais—called by the Natives, for some unexplained reason, *orang abai*—Sulus, Bajows, Illanuns and Balininis; there are also a few Bugis, or natives of Celebes.

These are the people who, before the Company's arrival, lorded it over the more ignorant interior tribes, and prevented their having direct dealings with traders and foreigners, and to whom, consequently, the advent of a still more civilized race than themselves was very distasteful.

The habits of the Brunai people have already been sufficiently described.

The Sulus are, next to the Brunais, the most civilized race and, without any exception, the most warlike and powerful. For nearly three centuries, they have been more or less in a state of war with the Spaniards of the Philippine Islands, and even now, though the Spaniards have established a fortified post in their principal island, their subjugation is by no means complete.

The Spanish officials dare not go beyond the walls of their settlement, unless armed and in force, and it is no rare thing for fanatical Sulus, singly or in small parties, to make their way into the Spanish town, under the guise of unarmed and friendly peasants, and then suddenly draw their concealed krises and rush with fury on officers, soldiers and civilians, generally managing to kill several before they are themselves cut down.

They are a much bolder and more independent race than the Brunais, who have always stood in fear of them, and it was in consideration of its undertaking to defend them against their attacks that the Brunai Government conceded the exclusive trade in pepper to the East India Company. Their religion—Muhammadanism—sits even more lightly on the Sulus than on the Brunais, and their women, who are fairer and better looking than their Brunai sisters, are never secluded or veiled, but often take part in public deliberations and, in matters of business, are even sharper than the men.

The Sulus are a bloodthirsty and hard-hearted race, and, when an opportunity occurs, are not always averse to kidnapping even their own countrymen and selling them into slavery. They entertain a high notion of their own importance, and are ever ready to resent with their krises the slightest affront which they may conceive has been put upon them.

In Borneo, they are found principally on the North-East Coast, and a good many have settled in British North Borneo under the Company's Government. They occasionally take contracts for felling jungle and other work of similar character, but are less disposed than the Brunai men to perform work for Europeans on regular wages. Among their good qualities, it may be mentioned that they are faithful and trustworthy followers of any European to whom they may become attached. Their language is distinct from ordinary Malay, and is akin to that of the Bisaias, one of the principal tribes of the Philippines, and is written in the Arabic character; but many Malay terms have been adopted into the language, and most of the trading and seafaring Sulus know enough Malay to conclude a bargain.

The most numerous Muhammadan race in British North] Borneo is that of the Bajows, who are found on both coasts, but, on the West Coast, not South of the Pappar River. These are the *orang-laut* (men of the sea) or sea-gipsies of the old writers, and are the worst class that we have to deal with, being of a treacherous and thievish disposition, and confirmed gamblers and cattle-lifters.

They also form a large proportion of the population of the Sulu Islands, where they are, or used to be, noted kidnappers and pirates, though also distinguished for their skill in pearl fisheries. Their religion is that of Mahomet and their language Malay mixed, it is said, with Chinese and Japanese elements; their women are not secluded, and it is a rare thing for a Borneo Bajow to take the trouble of making the pilgrimage to Mecca. They are found along the coasts of nearly all the Malay Islands and, apparently, in former days lived entirely in their boats. In British North Borneo, a large majority have taken to building houses and residing on the shore, but when Mr. PRYER first settled at Sandakan, there was a considerable community of them in the Bay, who had no houses at all, but were born, bred, married and died in their small canoes.

On the West Coast, the Bajows, who have for a long time been settled ashore, appear to be of smaller build and darker colour than the other Malays, with small sparkling black eyes, but on the East Coast, where their condition is more primitive, Mr. PRYER thinks they are much larger in stature and stronger and more swarthy than ordinary Malays.

On the East Coast, there are no buffaloes or horned cattle, so that the Bajows there have, or I should say *had*, to be content with kidnapping only, and as an example of their daring I may relate that in, I think, the year 1875, the Austrian Frigate *Friederich*, Captain Baron OESTERREICHER, was surveying to the South of Darvel Bay, and, running short of coal, sent an armed party ashore to cut firewood. The Bajows watched their opportunity and, when the frigate was out of sight, seized the cutter, notwithstanding the fire of the party on the shore, who expended all their ammunition in vain, and carried off the two boat-keepers, whose heads were subsequently shewn round in triumph in the neighbouring islands. Baron OESTERREICHER was unable to discover the retreat of these Bajows, and they remain unpunished to this day, and are at present numbered among the subjects of the British North Borneo Company. I have been since told that I have more than once unwittingly shaken hands and had friendly intercourse with some of them. In fairness to them I should add that it is more than probable that they mistook the *Friederich* for a vessel belonging to Spain, with whom their sovereign, the Sultan of Sulu, was at that time at war. After this incident, and by order of his Government, Baron OESTERREICHER visited Sandakan Bay and, I believe, reported that he could discover no population there other than monkeys. Altogether, he could not have carried away with him a very favourable impression of Northern Borneo. On the West Coast, gambling and cattle-lifting are the main pursuits of the gentlemanly Bajow, pursuits which soon brought him into close and very uncomfortable relations with the new Government, for which he entertains anything but feelings of affection. One of the principal independent rivers on the West Coast—*i. e.*, rivers which have not yet been ceded to the Company—is the Mengkabong, the majority of the inhabitants of which are Bajows, so that it has become a sort of river of refuge for the bad characters on the coast, as well as an entrepôt for the smuggling of gunpowder for sale to the head-hunting tribes of the interior. The existence of these independent and intermediate rivers on their West Coast is a serious difficulty for the Company in its efforts to establish good government and put down lawlessness, and every one having at heart the true interests of the natives of Borneo must hope that the Company will soon be successful in the negotiations which they have opened for the acquisition of these rivers. The Kawang was an important river, inhabited by a small number of Bajows, acquired by the Company in 1884, and the conduct of these people on one occasion affords a good idea of their treachery and their hostility towards good government. An interior tribe had made itself famous for its head-hunting proclivities, and the Kawang was selected as the best route by which to reach their district and inflict punishment upon them. The selection of this route was not a politic one, seeing that the inhabitants *were* Bajows, and that they had but recently come under the Company's rule. The expedition was detained a day or two at the Bajow village, as the full number of Dusun baggage-carriers had not arrived, and the Bajows were called upon to make up the deficiency, but did not do so. Matters were further complicated by the Dusuns recognising some noted cattle-lifters in the village, and demanding a buffalo which had been stolen from them. It being impossible to obtain the required luggage carriers, it was proposed to postpone the expedition, the stores were deposited in some of the houses of the village and the Constabulary were "dismissed" and, piling their arms, laid down under the shelter of some trees. Without any warning one of two Bajows, with whom Dr. FRASER was having an apparently friendly chat, discharged his musket point blank at the Doctor, killing him on the spot, and seven others rushed among the unarmed

Constables and speared the Sikh Jemmadhar and the Sergeant-Major and a private and then made off for the jungle. Captain De Fontaine gallantly, but rashly started off in pursuit, before any one could support him. He tripped and fell and was so severely wounded by the Bajows, after killing three of them with his revolver, that he died a few days afterwards at Sandakan. By this time the Sikhs had got their rifles and firing on the retreating party killed three and wounded two. Assistant Resident Little, who had received a spear in his arm, shot his opponent dead with his revolver. None of the other villagers took any active part, and consequently were only punished by the imposition of a fine. They subsequently all cleared out of the Company's territory. It was a sad day for the little Colony at Sandakan when Mr. Whitehead, a naturalist who happened to be travelling in the neighbourhood at the time, brought us the news of the melancholy affray, and the wounded Captain De Fontaine and several Sikhs, to whose comfort and relief he had, at much personal inconvenience, attended on the tedious voyage in a small steam-launch from the Kawang to the Capital. On the East Coast, also, their slave-dealing and kidnapping propensities brought the Bajows into unfriendly relations with the Government, and their lawlessness culminated in their kidnapping several Eraan birds' nest collectors, whom they refused to surrender, and making preparations for resisting any measures which might be taken to coerce them. As these same people had, a short time previously, captured at sea some five Dutch subjects, it was deemed that their offences brought them within the cognizance of the Naval authorities, and Captain A. K. Hope, R.N., at my request, visited the district in 1880, in H. M. S. *Zephyr* and, finding that the people of two of the Bajow villages refused to hold communication with us, but prepared their boats for action, he opened fire on them under the protection of which a party of the North Borneo Constabulary landed and destroyed the villages, which were quickly deserted, and many of the boats which had been used on piratical excursions. Happily, there was no loss of life on either side, and a very wholesome and useful lesson was given to the pirates without the shedding of blood, thanks to the good arrangements and tact of Captain HOPE. In order that the good results of this lesson should not be wasted, I revisited the scene of the little engagement in the *Zephyr* a few weeks subsequently, and not long afterwards the British flag was again shewn in the district, by Captain A. H. ALINGTON in H. M. S. *Satellite*, who interviewed the offending chiefs and gave them sound advice as to their conduct in future.

Akin to the Bajows are the Illanuns and Balinini, Muhammadan peoples, famous in former days as the most enterprising pirates of the Malayan seas. The Balinini, Balignini or Balanguini—as their name is variously written—originally came from a small island to the north of Sulu, and the Illanuns from the south coast of the island of Mindanao—one of the Philippines, but by the action of the Spanish and British cruisers their power has been broken and they are found scattered in small numbers throughout the Sulu Islands and on the seaboard of Northern Borneo, on the West Coast of which they founded little independent settlements, arrogating to their petty chiefs such high sounding titles as Sultan, Maharajah and so forth.

The Illanuns are a proud race and distinguished by wearing a much larger sword than the other tribes, with a straight blade about 28 inches in length. This sword is called a *kampilan*, and is used in conjunction with a long, narrow, wooden shield, known by the name of *klassap*, and in the use of these weapons the Illanuns are very expert and often boast that, were it not for their gunpowder, no Europeans could stand up to them, face to face. I believe, that it is these people who in former days manufactured the chain armour of which I have seen several specimens, but the use of which has now gone out of fashion. Those I have are made of small brass rings linked together, and with plates of brass or buffalo horn in front. The headpiece is of similar construction.

There are no Negritos in Borneo, although they exist in the Malay Peninsula and the Philippines, and our explorers have failed to obtain any specimens of the "tailed" people in whose existence many of the Brunai people believe. The late Sultan of Brunai gravely assured me that there was such a tribe, and that the individuals composing it were in the habit of carrying about chairs with them, in the seat of each of which there was a little hole in which the lady or gentleman carefully inserted her or his tail before settling down to a comfortable chat. This belief in the existence of a tailed race appears to be widespread, and in his "Pioneering in New Guinea" Mr CHALMERS gives an amusing account of a detailed description of such a tribe by a man who vowed *he had lived with them*, and related how they were provided with long sticks, with which to make holes in the ground before squatting down, for the reception of their short stumpy tails! I think it is Mr. H. F. ROMILLY who, in his interesting little work on the Western Pacific and New Guinea, accounts for the prevalence of "yarns" of this class by explaining that the natives regard Europeans as being vastly superior to them in general knowledge and, when they find them asking such questions as, for instance, whether there are tailed-people in the interior, jump to the conclusion that the white men must have good grounds for believing that they do exist, and then they gradually come to believe in their existence themselves. There is, however, I think, some excuse for the Brunai people's belief, for I have seen one tribe of Muruts who, in addition to the usual small loin cloth, wear on their backs only a skin of a long-tailed monkey, the tail of which hangs down behind in such a manner as, when the men are a little distance off, to give one at first glance the impression that it is part and parcel of the biped.

In Labuan it used to be a very common occurrence for the graves of the Europeans, of which unfortunately, owing to its bad climate when first settled, there are a goodly number, to be found desecrated and the bones scattered about. The perpetrators of these outrages have never been discovered, notwithstanding the most stringent enquiries. It was once thought that they were broken open by head-hunting tribes from the mainland, but this theory was disproved by the fact that the skulls were never carried away. As we know of no Borneo tribe which is in the habit of breaking open graves, the only conclusion that can be come to is that the graves were rifled under the supposition that the Europeans buried treasure with their dead, though it is strange that their experiences of failure never seemed to teach them that such was not the case.

The Muhammadan natives are buried in the customary Muhammadan manner in regular graveyards kept for the purpose.

The aborigines generally bury their dead near their houses, erecting over the graves little sheds adorned, in the case of chiefs, with bright coloured clothes, umbrellas, etc. I once went to see the lying in state of a deceased Datoh, who had been dead nine days. On entering the house I looked about for the corpse in vain, till my attention was drawn to an old earthen jar, tilted slightly forward, on the top of the old Chief's goods—his sword, spear, gun and clothing.

In this jar were the Datoh's remains, the poor old fellow having been doubled up, head and heels together, and forced through the mouth of the vessel, which was about two feet in diameter. The jar itself was about four feet high. Over the corpse was thickly sprinkled the native camphor, and the jar was closed with a piece of buffalo hide, well sealed over with gum dammar. They told us the Datoh was dressed in his best clothes and had his pipe with him, but nothing else. He was to be buried that day in a small grave excavated near the house, just large enough to contain the jar, and a buffalo was being killed and intoxicating drink prepared for the numerous friends and followers who were flocking in for the wake. Over his grave cannon would be fired to arouse the spirits who were to lead him to Kinabalu, the people shouting out "Turn neither to the right nor to the left, but proceed straight to Kinabalu"—the sacred mountain where are collected the spirits of all good Dusuns under, I believe, the presidency of a great spirit known as Kinaringan

CHAPTER XI

The population of North Borneo, as has been shewn, is very scanty and the great object of the new Government should be to attract population and capital to their territory. Java is often quoted as an island which, under Dutch rule, has attained great prosperity without any large immigration of Chinese or other foreigners. This is true, but in Java the Dutch had not only a fertile soil and good climate in their favour, but found their Colony already thickly populated by native races who had, under Hindu and Arab influences, made considerable advances in civilization, in trade and in agriculture, and who, moreover, had been accustomed to a strong Government.

The Dutch, too, were in those days able to introduce a Government of a paternal and despotic character which the British North Borneo Company are, by the terms of the Royal Charter, precluded from imitating.

It was Sir JAMES BROOKE'S wish to keep Sarawak for the natives, but his successor has recognised the impolicy of so doing and admits that "without the Chinese we can do nothing." Experience in the Straits Settlements, the Malay Peninsula and Sarawak has shewn that the people to cause rapid financial progress in Malayan countries are the hard-working, money-loving Chinese, and these are the people whom the Company should lay themselves out to attract to Borneo, as I have more than once pointed out in the course of these remarks. It matters not what it is that attracts them to the country, whether trade, as in Singapore, agriculture, as in Johor and Sarawak, or mining as in Perak and other of the Protected Native States of the Peninsula—once get them to voluntarily immigrate, and govern them with firmness and justice, and the financial success of the Company would, in my opinion, be assured. The inducements for the Chinese to come to North Borneo are trade, agriculture and possibly mining. The bulk of those already in the country are traders, shop-keepers, artisans and the coolies employed by them, and the numbers introduced by the European tobacco planters for the cultivation of their estates, under the system already explained, is yearly increasing. Very few are as yet engaged in agriculture on their own account, and it must be confessed that the luxuriant tropical jungle presents considerable difficulties to an agriculturist from China, accustomed to a country devoid of forest, and it would be impossible for Chinese peasants to open land in Borneo for themselves without monetary assistance, in the first instance, from the Government or from capitalists. In Sarawak Chinese pepper planters were attracted by free passages in Government ships and by loans of money, amounting to a considerable total, nearly all of which have since been repaid, while the revenues of the State have been almost doubled. The British North Borneo Company early recognised the desirabilty of encouraging Chinese immigration, but set to work in too great haste and without judgment.

They were fortunate in obtaining the services for a short time, as their Commissioner of Chinese Immigration, of a man so well-known in China as the late Sir WALTER MEDHURST, but he was appointed before the Company's Government was securely established and before proper arrangements had been made for the reception of the immigrants, or sufficient knowledge obtained of the best localities in which to locate them. His influence and the offer of free passages from China, induced many to try their fortune in the Colony, but the majority of them were small shop-keepers, tailors, bootmakers, and artisans, who naturally could not find a profitable outlet for their energies in a newly opened country to which capital (except that of the Governing Company) had not yet been attracted, and a large proportion of the inhabitants of which were satisfied with a loin cloth as the sole article of their attire. Great, therefore, was their disappointment, and comparatively few remained to try their luck in the country. One class of these immigrants, however, took kindly to North Borneo—the Hakkas, an agricultural clan, many of whom have embraced the Christian religion and are, in consequence, somewhat looked down upon by their neighbours. They are a steady, hard-working body of men, and cultivate vegetable and coffee gardens in the vicinity of the Settlements and rear poultry and pigs. The women are steady, and work almost as well as the men. They may form a valuable factor in the colonization of the country and a source of cheap labour for the planters in the future.

Sir SPENCER ST. JOHN, formerly Her Britannic Majesty's Consul-General at Brunai and who knew Borneo well, in his preface to the second edition of his "Life in the Forests of the Far East," lays great stress on the suitability of North Borneo for the immigration of Chinese on a very large scale, and prophesied that "should the immigration once commence, it would doubtless assume great proportions, and continue until every acre of useless jungle is cleared away, to give place to rice, pepper, gambier, sugar-cane, cotton, coffee, indigo and those other products which flourish on its fertile soil." No doubt a considerable impetus would be given to the immigration of Chinese and the introduction of Chinese as well as of European capital, were the British Government to proclaim* formally a Protectorate over the country, meanwhile the Company should try the effect of the offer of free passages from China and from Singapore and of liberal allotments of suitable land to *bona fide* agriculturists.

The sources of the Company's revenues have been referred to on a previous page, and may be summarised here under the following principal heads:—The "Farms" of Opium, Tobacco, Spirits, and of Pawnbroking, the Rent of the edible birds'-nest caves, Market Dues, Duties on Imports and Exports, Court Fines and Fees, Poll Tax on aborigines, House and Store Rents, profit accruing from the introduction of the Company's copper or bronze token coinage—a considerable item—Interest and Commission resulting from the Banking business carried on by the Treasury pending the establishment of a Banking Company, Land Sales and Quit-rents on land alienated, and Postal Receipts.

The Poll Tax is a source of revenue well-known in the East and not objected to by most of our natives, with whom it takes the place of the land rent which the Government of India imposes. To our aborigines a land rent would be most distasteful at present, and they infinitely prefer the Poll Tax and to be allowed to own and farm what land they like without paying premium or rent. The more civilized tribes, especially on the West coast, recognize private property in land, the boundaries of their gardens and fields being carefully marked and defined, and the property descending from fathers to children. The rate of the Poll Tax is usually $2 for married couples and $1 for adult bachelors per annum, and I believe this is about the same rate as that collected by the British Government in Burma. At first sight it has the appearance of a tax on marriage, but in the East, generally women do a great deal of the out-door as well as of the indoor work, so that a married man is in a much better position than a bachelor for acquiring wealth, as he can be engaged in collecting jungle produce, or in trading, or in making money in other ways, while his womenkind are planting out or gathering in the harvest.

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* Now accomplished.

The amounts *received* by the Company for the sale of their waste lands has been as follows:—

1882,	... $16,340	1885,	... $ 2,860
1883,	... $25,449	1886,	... $12,035
1884,	... $15,460	1887,*	... $14,505

The receipts for 1888, owing to the rush for tobacco lands already alluded to, and to the fact that the balances of the premia on lands taken up in 1887 becomes due in that year, will be considerably larger than those of any previous period.

The most productive, and the most elastic source of revenue is that derived from the Excise on the retail of opium and, with the comparatively small number of Chinese at present in the country, this amounted in 1887 to $19,980, having been only $4,537 in 1882.† The next most substantial and promising item is the Customs Duties on Import and Export, which from about $8,300 in 1882 have increased to $19,980 in 1887.‡

The local expenditure in Borneo is chiefly for salaries of the officials, the armed Constabulary and for Gaols and Public Works, the annual "rental" payable to the Sultans of Brunai and Sulu and others, the subsidizing of steamers, Medical

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* In 1888, $246,457.

† In 1888, $22,755 were realized, and the Estimate for 1890 is $70,000 for the Opium Farm.

‡ In 1888, $22,755.

Services, Printing, Stationery, Prospecting, Experimental Gardens and Harbour and Postal Services. The designations of the principal officials employed by the Company in Borneo have been given on a previous page; the salaries allowed them, as a rule, can scarcely be called too liberal, and unfortunately the Court of Directors does not at present feel that it is justified in sanctioning any pension scheme. Those of my readers who are conversant with the working of Public Offices will recognize that this decision of the Directors deprives the service of one great incentive to hard and continuous work and of a powerful factor in the maintenance of an effective discipline, and it speaks volumes for the quality of the officials whose services the Company has been so fortunate as to secure without this attraction, that it is served as faithfully, energetically and zealously as any Government in the world. If I may be allowed to say so here, I can never adequately express my sense of the valuable assistance and support I received from the officers, with scarcely any exception, during my six years' tenure of the appointment of Governor. An excellent spirit pervades the service and, when the occasions have arisen, there have never been wanting officers ready to risk their lives in performing their duties, without hope of rewards or distinctions, Victoria Crosses or medals.

The figures below speak for the advance which the country is making, not very rapidly, perhaps the shareholders may think, but certainly, though slowly, surely and steadily:—

Revenue in 1883, $51,654, with the addition of Land Sales, $25,449, a total of $77,103.

Revenue in 1887, $142,687, with the addition of Land Sales, $14,505, a total of $ 157,192.

Expenditure in 1883, including expenditure on Capital Account, $391,547.

Expendiure in 1887, including expenditure on Capital Account, $209,862.

For reasons already mentioned, the revenue for 1888 is expected to considerably exceed that of any previous year, while the expenditure will probably not be more and may be less than that of 1887.[*]

The expenses of the London office average, I believe, about £3,000 a year.

As Sir RUTHERFORD ALCOCK, their able and conscientious Chairman, explained to the shareholders at a recent meeting, "with reference to the important question of expenditure, the position of the Company was that of a man coming into possession of a large estate which had been long neglected, and which was little better than a wilderness. If any rent roll was to be derived from such a property there must be, in the first place, a large outlay in many ways before the land could be made profitable, or indeed tenantable. That was what the Company had had to do and what they had been doing: *and that had been the history of all our Colonies.*" I trust that the few observations I have offered will have shewn my readers that, though British North Borneo might be described as a wilderness so far as regards the absence of development when the Company took possession of it, such a description is by no means applicable to it when regard is had to its great and undoubted natural resources.

British North Borneo not being a Crown Colony, it has to provide itself for the maintenance of order, both ashore and afloat, without assistance from the Imperial Army or Navy, except such temporary assistance as has been on two occasions accorded by Her Majesty's vessels, under circumstances which have been detailed. There are no Imperial Troops stationed either in Labuan or in any portion of Borneo, and the Company has organized an armed Police Force to act both in a military and in a civil capacity.

The numbers of their Force do not much exceed two hundred of all ranks, and are composed principally of Sikhs from the Punjaub and a few Dyaks from Sarawak—an excellent mixture for fighting purposes, the Dyaks being sufficiently courageous and expert in all the arts of jungle warfare, while the pluck and cool steadiness under fire of the Sikhs is too well-known to need comment here. The services of any number of Sikhs can, it appears, be easily obtained for this sort of work, and some years ago a party of them even took service with the native Sultan of Sulu, who, however, proved a very indifferent paymaster and was soon deserted by the mercenaries, who are the most money-grabbing lot of warriors I have ever heard of. Large bodies of Sikhs are employed and drilled as Armed Constables in Hongkong, in the Straits Settlements and in the Protected Native States of the Malay Peninsula, who, after a fixed time of service, return to their country, their places being at once taken by their compatriots, and one cannot help thinking what effect this might have in case of future disturbances in our Indian Empire, should the Sikh natives make common cause with the malcontents.

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[*] Revenue in 1888, $148,286, with addition of Land Sales, $246,457, a total of $394,743.

Expenditure in 1888, including Padas war expenses, $210,985, and expenditure on Capital Account, $25,283—total $236,268.

Fault has been found with the Company for not following the example of Sarawak and raising an army and police from among its own people. This certainly would have been the best policy had it only been feasible; but the attempt was made and failed.

As I have pointed out, British North Borneo is fortunate in not possessing any powerful aboriginal tribe of pronounced warlike instincts, such as the Dyaks of Sarawak.

The Muhammadan Bajows might in time make good soldiers, but my description of them will have shewn that the Company could not at present place reliance in them.

While on the subject of "fault finding," I may say that the Company has also been blamed for its expenditure on public works and on subsidies for steam communication with the outer world.

But our critics may rest assured that, had not the Company proved its faith in the country by expending some of its money on public works and in providing facilities for the conveyance of intending colonists, neither European capital nor Chinese population, so indispensable to the success of their scheme, would have been attracted to their Territory as is now being done—for the country and its new Government lacked the prestige which attaches to a Colony opened by the Imperial Government. The strange experiment, in the present day, of a London Company inaugurating a Government in a tropical Colony, perhaps not unnaturally caused a certain feeling of pique and uncharitableness in the breasts of that class of people who cannot help being pleased at the non-success of their neighbours' most cherished schemes, and who are always ready with their "I told you so." The measure of success attained by British North Borneo caused it to come in for its full share of this feeling, and I am not sure that it was not increased and aggravated by the keen interest which all the officers took in the performance of their novel duties—an interest which, quite unintentionally, manifested itself, perhaps, in a too enthusiastic and somewhat exaggerated estimate of the beauties and resources of their adopted country and of the grandeur of its future destiny and of its rapid progress, and which, so to speak, brought about a reaction towards the opposite extreme in the minds of the class to whom I refer. This enthusiasm was, to say the least, pardonable under the circumstances, for all men are prone to think that objects which intensely engross their whole attention are of more importance than the world at large is pleased to admit. Every man worth his salt thinks his own geese are swans.

A notable exception to this narrow-mindedness was, however, displayed by the Government of Singapore, especially by its present Governor, Sir **Cecil Clementi Smith**, who let no opportunity pass of encouraging the efforts of the infant Government by practical assistance and unprejudiced counsel.

Lord **Brassey**, whose visit to Borneo in the *Sunbeam* I have mentioned, showed a kindly appreciation of the efforts of the Company's officers, and practically evinced his faith in the future of the country by joining the Court of Directors on his return to England.

In the number of the "Nineteenth Century" for August, 1887, is a sketch of the then position of the portion of Borneo which is under the British influence, from his pen.

As the country is developed and land taken up by European planters and Chinese, the Company will be called upon for further expenditure on public works, in the shape of roads, for at present, in the interior, there exist only rough native tracks, made use of by the natives when there does not happen to be a river handy for the transport of themselves and their goods. Though well watered enough, British North Borneo possesses no rivers navigable for European vessels of any size, except perhaps the Sibuku River, the possession of which is at the present moment a subject of dispute with the the Dutch. This is due to the natural configuration of the country. Borneo, towards the North, becoming comparatively narrow and of roughly triangular shape, with the apex to the North. The only other river of any size and navigable for vessels drawing about nine feet over the bar, is the Kinabatangan, which, like the Sibuku, is on the East side, the coast range of mountains, of which Kinabalu forms a part, being at no great distance from the West coast and so preventing the occurrence of any large rivers on that side. From data already to hand, it is calculated that the proceeds of Land Sales for 1887 and 1888 will equal the total revenue from all other sources, and a portion of this will doubtless be set aside for road making and other requisite public works.

The question may be asked what has the Company done for North Borneo?

A brief reply to this question would include the following points. The Company has paved the way to the ultimate extinction of the practice of slavery; it has dealt the final blow to the piracy and kidnapping which still lingered on its coasts; it has substituted one strong and just Government for numerous weak, cruel and unjust ones; it has opened Courts of Justice which know no distinction between races and creeds, between rich and poor, between master and slave; it is rapidly adjusting ancient blood feuds between the tribes and putting a stop to the old custom of head-hunting; it has broken down the barrier erected by the coast Malays to prevent the aborigines having access to the outer world and is thus enabling trade and its accompanying civilisation to reach the interior races; and it is attracting European and Chinese capital to the country and opening a market for British traders.

These are some, and not inconsiderable ones, of the achievements of the British North Borneo Company, which, in its humble way, affords another example of the fact that the "expansion of Britain" has been in the main due not to the exertions of its Government so much as to the energy and enterprise of individual citizens, and Sir ALFRED DENT, the founder, and Sir RUTHERFORD ALCOCK, the guide and supporter of the British North Borneo Company, cannot but feel a proud satisfaction in the reflection that their energy and patient perseverance have resulted in conferring upon so considerable a portion of the island of Borneo the benefits above enumerated and in adding another Colony to the long list of the Dependencies of the British Crown.

In the matter of geographical exploration, too, the Company and its officers have not been idle, as the map brought out by the Company sufficiently shews, for previous maps of North Borneo will be found very barren and uninteresting, the interior being almost a complete blank, though possessing one natural feature which is conspicuous by its absence in the more recent and trustworthy one, and that is the large lake of Kinabalu, which the explorations of the late Mr. F. K. WITTI have proved to be non-existent. Two explanations are given of the origin of the myth of the Kinabalu Lake—one is that in the district, where it was supposed to exist, extensive floods do take place in very wet seasons, giving it the appearance of a lake, and, I believe there are many similar instances in Dutch Borneo, where a tract of country liable to be heavily flooded has been dignified with the name of *Danau*, which is Malay for *lake*, so that the mistake of the European cartographers is a pardonable one. The other explanation is that the district in question is known to the aboriginal inhabitants as *Danau*, a word which, in their language, has no particular meaning, but which, as above stated, signifies, in Malay, a lake. The first European visitors would have gained all their information from the Malay coast tribes, and the reason for their mistaken supposition of the existence of a large lake can be readily understood. The two principal pioneer explorers of British North Borneo were WITTI and FRANK HATTON, both of whom met with violent deaths. WITTI'S services as one of the first officers stationed in the country, before the British North Borneo Company was formed, have already been referred to, and I have drawn on his able report for a short account of the slave system which formerly prevailed. He had served in the Austrian Navy and was a very energetic, courageous and accomplished man. Besides minor journeys, he had traversed the country from West to East and from North to South, and it was on his last journey from Pappar, on the West Coast, inland to the headwaters of the Kinabatangan and Sambakong Rivers, that he was murdered by a tribe, whose language none of his party understood, but whose confidence he had endeavoured to win by reposing confidence in them, to the extent even of letting them carry his carbine. He and his men had slept in the village one night, and on the following day some of the tribe joined the party as guides, but led them into the ambuscade, where the gallant WITTI and many of his men were killed by *sumpitans*.* So far as we have been able to ascertain the sole reason for the attack was the fact that WITTI had come to the district from a tribe with whom these people were at war, and he was, therefore, according to native custom, deemed also to be an enemy. FRANK HATTON joined the Company's service with the object of investigating the mineral resources of the country and in the course of his work travelled over a great portion of the Territory, prosecuting his journeys from both the West and the East coasts, and undergoing the hardships incidental to travel in a roadless, tropical country with such ability, pluck and success as surprised me in one so young and slight and previously untrained and inexperienced in rough pioneering work.

He more than once found himself in critical positions with inland tribes, who had never seen or heard of a white man, but his calmness and intrepidity carried him safely through such difficulties, and with several chiefs he became a sworn brother, going through the peculiar ceremonies customary on such occasions. In 1883, he was ascending the Segama River to endeavour to verify the native reports of the existence of gold in the district when, landing on the bank, he shot at and wounded an elephant, and while following it up through the jungle, his repeating rifle caught in a rattan and went off, the bullet passing through his chest, causing almost immediate death. HATTON, before leaving England, had given promise of a distinguished scientific career, and his untimely fate was deeply mourned by his brother officers and a large circle of friends. An interesting memoir of him has been published by his father, Mr. JOSEPH HATTON, and a summary of his journeys and those of WITTI, and other explorers in British North Borneo, appeared in the "Proceedings of the Royal Geographical Society and Monthly Record of Geography" for March, 1888, being the substance of a paper read before the Society by Admiral R. C. MAYNE, C.B., M.P. A memorial cross has been erected at Sandakan, by their brother officers, to the memory of WITTI, HATTON, DE FONTAINE and Sikh officers and privates who have lost their lives in the service of the Government.

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* The *sumpitan*, or native blow-pipe, has been frequently described by writers on Borneo. It is a tube 6½ feet long, carefully perforated lengthwise and through which is fired a poisoned dart, which has an extreme range of about 80 to 90 yards, but is effective at about 20 to 30 yards. It takes the place in Borneo of the bow and arrow of savage tribes, and is used only by the aborigines and not by the Muhammadan natives.

To return for a moment to the matter of fault-finding, it would be ridiculous to maintain that no mistakes have been made in launching British North Borneo on its career as a British Dependency, but then I do not suppose that any single Colony of the Crown has been, or will be inaugurated without similar mistakes occurring, such, for instance, as the withholding money where money was needed and could have been profitably expended, and a too lavish expenditure in other and less important directions. Examples will occur to every reader who has studied our Colonial history. If we take the case of the Colony of the Straits Settlements, now one of our most prosperous Crown Colonies and which was founded by the East India Company, it will be seen that in 1826-7 the "mistakes" of the administration were on such a scale that there was an annual deficit of £100,000, and the presence of the Governor-General of India was called for to abolish useless offices and effect retrenchments throughout the service.

The British North Borneo Company possesses a valuable property, and one which is daily increasing in value, and if they continue to manage it with the care hitherto exhibited, and if, remembering that they are not yet quite out of the wood, they are careful to avoid, on the one hand, a too lavish expenditure and, on the other, an unwise parsimony, there cannot, I should say, be a doubt that a fair return will, at no very distant date, be made to them on the capital they have expended.

As for the country *per se*, I consider that its success is now assured, whether it remains under the rule of the Company or is received into the fellowship of *bond fide* Colonies of the Empire.

In bringing to a conclusion my brief account of the Territory, some notice of its suitability as a residence for Europeans may not be out of place, as bearing on the question of "what are we to do with our boys?"

I have my own experience of seventeen years' service in Northern Borneo, and the authority of Dr. WALKER, the able Medical Officer of the Government, for saying that in its general effect on the health of Europeans, the climate of British North Borneo, as a whole, compares not unfavourably with that of other tropical countries.

There is no particular "unhealthy season," and Europeans who lead a temperate and active life have little to complain of, except the total absence of any cold season, to relieve the monotony of eternal summer. On the hills of the interior, no doubt, an almost perfect climate could be obtained.

One great drawback to life for Europeans in all tropical places is the fact that it is unwise to keep children out after they have attained the age of seven or eight years, but up to that age the climate appears to agree very well with them and they enjoy an immunity from measles, whooping cough and other infantile diseases. This enforced separation from wife and family is one of the greatest disadvantages in a career in the tropics.

We have not, unfortunately, had much experience as to how the climate of British North Borneo affects English ladies, but, judging from surrounding Colonies, I fear it will be found that they cannot stand it quite so well as the men, owing, no doubt, to their not being able to lead such an active life and to their not having official and business matter to occupy their attention during the greater part of the day, as is the case with their husbands.

Of course, if sufficient care is taken to select a swampy spot, charged with all the elements of fever and miasma, splendidly unhealthy localities can be found in North Borneo, a residence in which would prove fatal to the strongest constitution, and I have also pointed out that on clearing new ground for plantations fever almost inevitably occurs, but, as Dr. WALKER has remarked, the sickness of the newly opened clearings does not last long when ordinary sanitary precautions are duly observed.

At present the only employers of Europeans are the Governing Company, who have a long list of applicants for appointments, the Tobacco Companies, and two Timber Companies. Nearly all the Tobacco Companies at present at work are of foreign nationality and, doubtless, would give the preference to Dutch and German managers and assistants. Until more English Companies are formed, I fear there will be no opening in British North Borneo for many young Englishmen not possessed of capital sufficient to start planting on their own account. It will be remembered that the trade in the natural products of the country is practically in the hands of the Chinese.

Among the other advantages of North Borneo is its entire freedom from the presence of the larger carnivora—the tiger or the panther. Ashore, with the exception of a few poisonous snakes—and during seventeen years' residence I have never heard of a fatal result from a bite—there is no animal which will attack man, but this is far from being the case with the rivers and seas, which, in many places, abound in crocodiles and sharks. The crocodiles are the most dreaded animals, and are found in both fresh and salt water. Cases are not unknown of whole villages being compelled to remove to a distance, owing to the presence of a number of man-eating crocodiles in a particular bend of a river; this happened to the village of Sebongan on the Kinabatangan River, which has been quite abandoned.

Crocodiles in time become very bold and will carry off people bathing on the steps of their houses over the water, and even take them bodily out of their canoes.

At an estate on the island of Daat, I had two men thus carried off out of their boats at sea, after sunset, in both cases the mutilated bodies being subsequently recovered. The largest crocodile I have seen was one which was washed ashore on an island, dead, and which I found to measure within an inch of twenty feet.

Some natives entertain the theory that a crocodile will not touch you if you are swimming or floating in the water and not holding on to any thing, but this is a theory which I should not care to put practically to the test myself.

There is a native superstition in some parts of the West Coast, to the effect that the washing of a mosquito curtain in a stream is sure to excite the anger of the crocodiles and cause them to become dangerous. So implicit was the belief in this superstition, that the Brunai Government proclaimed it a punishable crime for any person to wash a mosquito curtain in a running stream.

When that Government was succeeded by the Company, this proclamation fell into abeyance, but it unfortunately happened that a woman at Mempakul, availing herself of the laxity of the law in this matter, did actually wash her curtain in a creek, and that very night her husband was seized and carried off by a crocodile while on the steps of his house. Fortunately, an alarm was raised in time, and his friends managed to rescue him, though badly wounded; but the belief in the superstition cannot but have been strengthened by the incident.

Some of the aboriginal natives on the West Coast are keen sportsmen and, in the pursuit of deer and wild pig, employ a curious small dog, which they call *asu*, not making use of the Malay word for dog—*anjing*. The term *asu* is that generally employed by the Javanese, from whose country possibly the dog may have been introduced into Borneo. In Brunai, dogs are called *kuyok*, a term said to be of Sumatran origin.

On the North and East there are large herds of wild cattle said to belong to two species, *Bos Banteng* and *Bos Gaurus* or *Bos Sondaicus*. In the vicinity of Kudat they afford excellent sport, a description of which has been given, in a number of the "Borneo Herald," by Resident G. L. Davies, who, in addition to being a skilful manager of the aborigines, is a keen sportsman. The native name for them on the East Coast is *Lissang* or *Seladang*, and on the North, *Tambadau*. In some districts the water buffalo, *Bubalus Buffelus*, has run wild and affords sport.

The deer are of three kinds—the *Rusa* or *Sambur* (*Rusa Aristotelis*,), the *Kijang* or roe, and the *Plandok*, or mousedeer, the latter a delicately shaped little animal, smaller and lighter than the European hare. With the natives it is an emblem of cunning, and there are many short stories illustrating its supposed more than human intelligence. Wild pig, the *Sus barbatus*, a kind distinct from the Indian animal, and, I should say, less ferocious, is a pest all over Borneo, breaking down fences and destroying crops. The jungle is too universal and too thick to allow of pig-sticking from horseback, but good sport can be had, with a spear, on foot, if a good pack of native dogs is got together.

It is on the East Coast only that elephants and rhinoceros, called *Gajah* and *Badak* respectively, are found. The elephant is the same as the Indian one and is fairly abundant; the rhinoceros is *Rhinoceros sumatranus*, and is not so frequently met with.

The elephant in Borneo is a timid animal and, therefore, difficult to come up with in the thick jungle. None have been shot by Europeans so far, but the natives, who can walk through the forest so much more quietly, sometimes shoot them, and dead tusks are also often brought in for sale.

The natives in the East Coast are very few in numbers and on neither coast is there any tribe of professional hunters, or *shikaris*, as in India and Ceylon, so that, although game abounds, there are not, at present, such facilities for Europeans desirous of engaging in sport as in the countries named.*

A little] Malay bear occurs in Borneo, but is not often met with, and is not a formidable animal.

My readers all know that Borneo is the home of the *Orang-utan* or *Mias*, as it is called by the natives. No better description of the animal could be desired than that given by WALLACE in his "Malay Archipelago." There is an excellent picture of a young one in the second volume of Dr. GUILLEMARD'S "Cruise of the Marchesa." Another curious monkey, common in mangrove swamps, is the long-nosed ape, or *Pakatan*, which possesses a fleshy probosis some three inches long. It is difficult to tame, and does not live long in captivity.

As in Sumatra, which Borneo much resembles in its fauna and flora, the peacock is absent, and its place taken by the *Argus* pheasant. Other handsome pheasants are the *Fireback* and the *Bulwer* pheasants, the latter so named after Governor Sir HENRY BULWER, who took the first specimen home in 1874. These pheasants do not rise in the jungle and are, therefore, uninteresting to the Borneo sportsman. They are frequently trapped by the natives. There are many kinds of pigeons, which afford good sport. Snipe occur, but not plentifully. Curlew are numerous in some localities, but very wild. The small China quail are abundant on cleared spaces, as also is the painted plover, but cleared spaces in Borneo are somewhat few and far between. So much for sport in the new Colony.

Let me conclude my paper by quoting the motto of the British North Borneo Company—*Pergo et perago*—I undertake a thing and go through with it. Dogged persistence has, so far, given the Territory a fair start on its way to prosperity, and the same perseverance will, in time, be assuredly rewarded by complete success.*

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* Dr. GUILLEMARD in his fascinating book, "The Cruise of the Marchesa," states, that two English officers, both of them well-known sportsmen, devoted four months to big game shooting in British North Borneo and returned to Hongkong entirely unsuccessful. Dr. GUILLEMARD was misinformed. The officers were not more than a week in the country on their way to Hongkong from Singapore and Sarawak, and did not devote their time to sport. Some other of the author's remarks concerning British North Borneo are somewhat incorrect and appear to have been based on information derived from a prejudiced source.

W. H. TREACHER.

P.S.—I cannot close this article without expressing my great obligations to Mr. C. V. CREAGH, the present Governor of North Borneo, and to Mr. KINDERSLEY, the Secretary to the Company in London, for information which has been incorporated in these notes.

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* In 1889, the Company declared their first Dividend.

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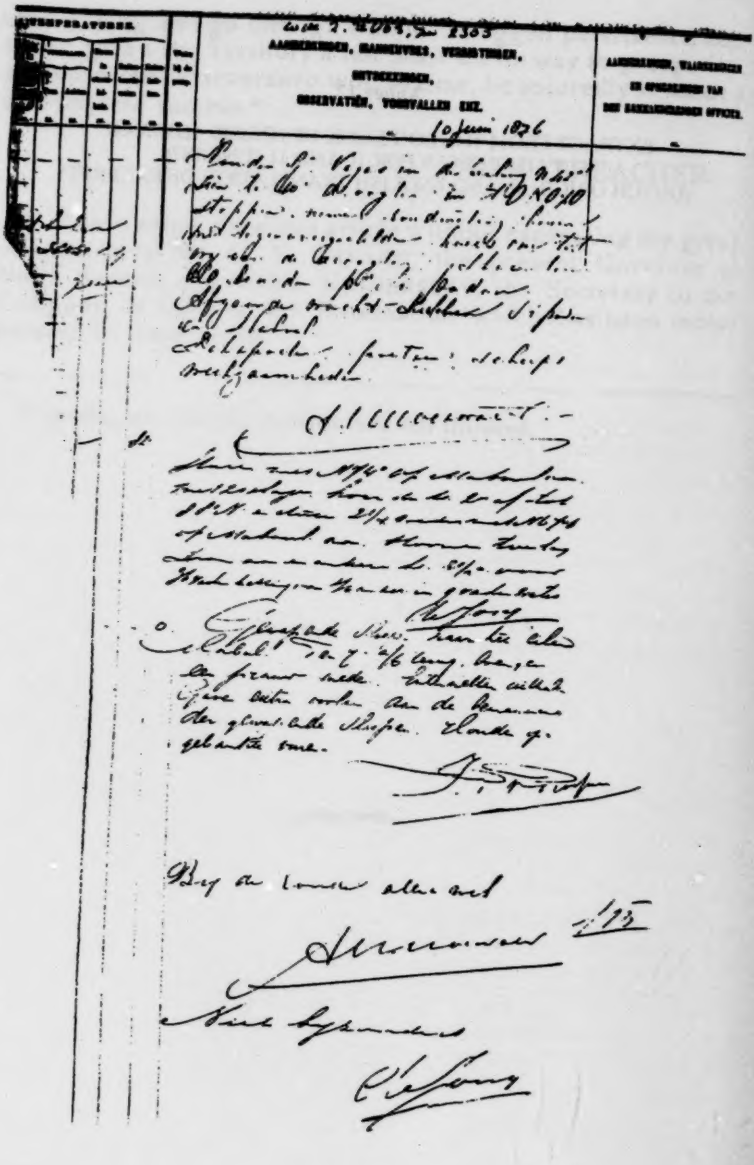
Annex 12

EXTRACT FROM THE LOG-BOOK OF HNLMS *ADMIRAAL VAN KINSBERGEN* FOR 10 AND 11 JUNE 1876 (DUTCH ORIGINAL AND ENGLISH TRANSLATION OF EXCERPT)



...TEMPERATUREN.

[illegible] 2303

AANTEEKENINGEN, MANOEUVRES, VERRIGTINGEN,
ONTDEKKINGEN,
OBSERVATIËN, VOORVALLEN ENZ.

AANTEEKENINGEN, WAARNEMINGEN
EN OPMERKINGEN VAN
DEN [illegible] OFFICIER.

10 Juni 1876

[illegible]

Afgezonden [illegible] Sipadan en Mabul.

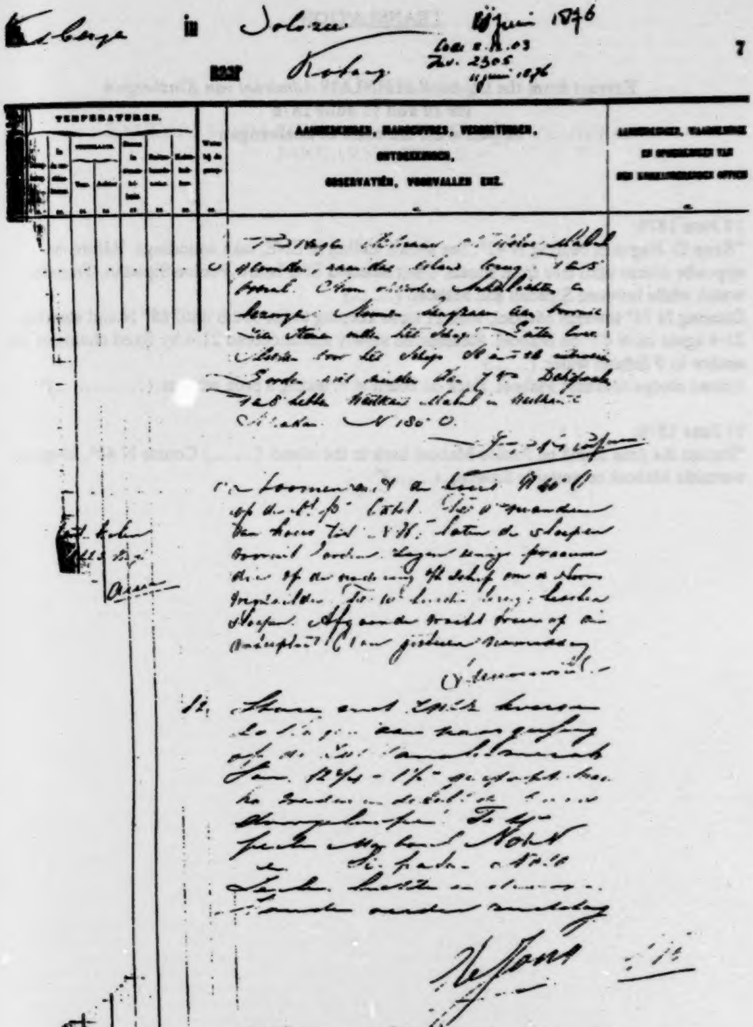
[illegible]

[illegible]

[illegible]

Bij de [illegible] alles wel

Niets bijzonders



in Jolozee juni 1876

7

Kotang Zr. 2305 juni 1876

TEMPERATUREN.

AANTEEKENINGEN, MANOEUVRES, VERRICHTINGEN, ONTDEKKINGEN, OBSERVATIËN, VOORVALLEN ENZ.

N 180° O.

TRANSLATION

Extract from the log-book of HNLMS *Admiraal van Kinsbergen*
for 10 and 11 June 1876
on patrol off the coast of Boeloengan

10 June 1876:

"Keep G. Nagus in bearing N 42°. See shoals ending in ENE, take soundings. Return on opposite course until free from shoals. Then steamed ESE below Poeloe Sipadan. Transfer watch while between Sipadan and Maboel. (.......)
Stearing N 74° towards Maboel, with 21 turns keeping to the south until 88° N and stearing 21/4 again on N 67° on Maboel. Steamed on slowly and anchored 21/4 by fixed chains of Stb anchor in 9 fathom water. (......)
Armed sloops to island Maboel. Back on board at 7, taking a proa with us. (..............)"

11 June 1876:

"Return the proa found on Poeloe Maboel back to the island. (.......) Course N 40°, keeping westside Maboel in westside Sipadan. (.......)"

Annex 13

EXCERPT FROM *THE BRITISH NORTH BORNEO HERALD*, JANUARY 1, 1895, P. 9

The future of Liberian coffee in Ceylon. One who has had a good deal to do with this product since it was first introduced into the island says, with reference to our remarks the other day, that he thinks topping if less injurious to the tree than absence of shade. He continues:—"The tree dislikes being in the open, and in my experience thrives best under shade; but not too thick shade. As to topping, if it is not resorted to it is impossible to pick the crop except as native coffee; but it wants very little pruning—the less the better, and I believe that with a careful selection of the seed—a matter of the utmost importance with this variety—splendid returns may be obtained in well-selected land in Ceylon.—*Ceylon Times*.

In our issue of the 12th December we omitted to say that the paragraph "Coffee planting in North Borneo" and the following letter from Mr. W. B. Pryer were taken from the columns of the *Ceylon Observer*.

At the annual meeting of the British Borneo Trading and Planting Company, held on 2nd instant, the report was adopted. Mr. A. J. Scrutton presided, and said that the board regretted they were not able to present a more favourable statement, but trade had been very bad in the East, and it had been impossible to force sales. Still, business to a profitable extent had been done. Large reductions had been made in the home expenditure as well as in Borneo. The China market had continued to improve since the accounts were made up, and the last advices received stated that the price of timber was almost the highest ever obtained. The board had given permission to the manager to use trading profits for planting coffee, sugar, &c., and a small acreage of coffee that had been planted was bearing excellent results. Coal had been discovered on their property, but they had no information as to its quality. Replying to a question, the managing director, Mr. C. P. Bennett, said that no doubt the capital would have to be written down sooner or later, but at present it was not possible to estimate the real value of the property. It was far from an unknown quantity. For instance, their land was the pick of the land round Sandakan Bay, and as Borneo progressed, it must become very valuable indeed.

The return made by the British Borneo and Trading and Planting Company show on the profit and lost account a debit balance of £1,843. The trading account shows a considerable improvement compared with previous years, although the Board regrets that the revival of the China market did not set in sufficiently early to enable the company to show a profit. A large amount (£623) has, however, been expended in putting the company's launches, bungalows, and buildings in thorough repair. The profit and loss account also discloses an item of £558 2s 7d. for loss on exchange. The directors have not drawn any fees.

The reports regarding the weather in Deli in September state that the first part of the month was pretty dry, in Serdang even up to the 22nd of the month, which promoted the work, but afterwards heavy rains and wind were experienced, so that the wet season has commenced. The prolonged drought has caused some damage to the plant, especially in Serdang. Cutting has nearly everywhere been finished. Quantity and quality of the new crop are satisfactory, as ten piculs are made on nearly all estates, among which there is much tobacco of light colours and fine leaf. Sorting is in full progress, and where this was not the case, it will no doubt commence in the beginning of October. In lower Deli the tobacco is dry and arid. On many estates the malaria exacted more sacrifices than in the preceding months.

The British North Borneo Government drew the attention of the Governor-General to the fact that the authorities of Bulongan, a Netherlands India vassal State, had been levying taxes on territory in the neighbourhood, which had been ceded by the Dutch Government to the British North Borneo Company in 1892. The Netherlands India Government warned the Sultan of Bulongan against doing anything of the kind in future, upon which the Sultan apologised to the authorities at Sandakan for his officials' transgression. The Governor of British North Borneo had also suggested to the Governor-General of Netherlands India the taking of joint measures against piracy in the waters under their respective jurisdictions in North Borneo. The Governor-General replied that the piracy sought to be guarded against was not committed by Dutch subjects but by inhabitants of the Sooloo islands, beyond Dutch waters. The Governor-General, however, promised to bring under more stringent control, native craft in Dutch waters.—*Straits Times*.

A Ceylon correspondent writes as follows:—"There are many young men here with £2,000 or so, which they cannot possibly turn to much account in Ceylon, who would probably do well in Borneo." This means a minimum capital of $20,000. Estimates for planting were given in the November *Herald*, and we would invite the young planter to calculate how many acres he can undertake and begin at once while exchange is low. Both coconuts and Liberian coffee thrive well in North Borneo, and we should like to see young Englishmen settling as planters in our territory.

In our issue of 1st December we devoted a leader to the consideration of what we might do in the timber trade which was prompted by the action taken by the Government of New Zealand to push their timber trade with England, since then we have received the *Colonies and India* from which we take the following extract:

By "Imperialist."

On Monday I had a very interesting conversation with Mr. James Freyberg, the timber expert for the New Zealand Government, at his office at the Agency in Victoria Street, where I saw him surrounded by a fine collection of choice New Zealand woods, and absorbed in calculations, statistics, and the large amount of highly important detail that has now resulted from his energetic and increasing work on this great timber undertaking. Mr. Freyberg drew my attention to the fact that, while the import of wood for paving purposes

Annex 14

LETTER FROM SIR. R. ALCOCK TO EARL GRANVILLE, 20 DECEMBER 1883

No. 84.

Sir R. Alcock to Earl Granville.—(Received December 21.)

The British North Borneo Company, 11, *Old Broad Street*,
December 20, 1883.

My Lord,

REFERRING to Mr. Lister's letter of the 23rd October last, forwarding copy of a protest received from the Netherlands Government against an alleged violation of Dutch territory in Borneo by officials of the British North Borneo Company, and inviting such observations as the Directors of the Company may have to offer thereon, I have the honour to state that a Report has recently been received from Mr. Treacher, the Governor of North Borneo, giving a detailed account of the proceedings taken on the occasion referred to in the letter of the Netherlands Chargé d'Affaires of the 8th October.

It appears that Mr. Treacher visited the Sibuco River on the 6th September, in one of the steam-launches of the Company, passing on his way the Settlement made by the Dutch on the Tawan River, which is placed on the Admiralty Chart of 1881 in about latitude 4° 18′ north, the Dutch flag flying at the time from a flagstaff ashore. He had also passed the promontory of Batu Tinagat, and could plainly distinguish the boundary mark put up by the Dutch. The Admiralty Chart places Batu Tinagat in latitude about 4° 11′ north, but the Dutch, it is believed, state it to be in 4° 19′ north.

In steaming towards the Sibuco estuary the launch passed within easy hailing distance of two Dutch gun-vessels, the "Banda" and the "Padang," anchored close into the shore off Sebattick Island, where the channel begins to narrow. No notice was taken of the launch, which continued its course, and at sunset it anchored "in the true Sibuco River, which was pointed out" (to Governor Treacher and the officers with him) "by three Sambakong men," who had been taken as pilots from Silam, our most southern Settlement at present.

I cite this more particularly, as one of the points in dispute has hitherto been which of the many streams in this part of the territory constitutes the true Sibuco River. The mainland passed, we are told, "was a vast mangrove-plain or swamp, and the mouths of numerous rivers and streams were seen." Further on, the Governor informs us that, "commencing from Tawan our guides pointed out to us the Umas Umas, Malukei, Balantian, Kalabakan, Sudong, Tamoja, and Tabur, all which rivers we passed on our way from Tawan to Sibuco, and all which rivers are consequently claimed by the Dutch, as well as the Sibuco." The Governor goes on to say: "I cannot vouch for the accuracy of the names given by our guides, but I can vouch for the existence of the rivers, though some of them may, perhaps, be 'trusans'" (merely a through passage or channel). It now appears that the river marked Sibuco on the Admiralty Chart is either the Kalabakan or the Balantian, the true Sibuco being, roughly speaking, some 23 miles further south, to the west of Nanoking Island, as marked on the Company's maps and published in the Blue Book "Spain No. 1 (1882)" (Borneo and Sulu).

In view of this information, the Directors observe that, as Mr. Treacher pointed out to the Contrôleur, in a letter dated the 8th September, the Dutch flag is flying within the boundaries ceded by the Sultans to the Company, as recapitulated and recognized by Her Majesty's Charter to extend to the Sibuco River. What is urgently wanted, therefore, is that Her Majesty's Government, singly or conjointly with the Netherlands Government, should by a survey fix the position of the true Sibuco River, so that the Company may know where their coast-line terminates. And, as regards the interior boundary line, the Directors will be willing to agree to any parallel of latitude, at or south of 4° north, that would secure the control of the mouths of the Sibuco, and prove a suitable and clear line for the frontier.

The question raised by the Netherlands Government as to the rights of the Sultans of Brunei and Sulu, at the date of the cession to the Company, to cede any territory "situated south and west of the Batu Tinagat, which forms part of the possessions of the King of the Netherlands" (as stated by the Dutch Contrôleur in his above-mentioned letter to Governor Treacher), is one which I do not propose to enter upon here. In ultimate resort it will of necessity have to be decided by the British Government in communication with that of the Netherlands under the conditions laid down by the Royal Charter. In any case it is the less necessary for the Directors at present to again offer their views, as in my letter of the 1st July, 1882, I fully stated to your Lordship the grounds for the opinion of the Court that this contention of the Dutch is not admissible. But as regards the serious injury to the Company that might result from the admission of the claim of the Dutch to the Sibuco River, and any refusal to agree to a degree of latitude considerably beyond the boundary of the Atas River (3° 19′ north) which they officially declared in 1846 to be their northernmost limit, I would call attention to the fact that the Dutch claim to the Sibuco River, if admitted, would, according to the custom of the country, include all the rivers in connection with it, as stated by the Commander of the "Banda" to Mr. Treacher, and would carry with it a quite unknown extent of territory north of the mouth of the Sibuco, far into the interior of the country. As both the Sibuco and Sambakong are believed to take their source from the vicinity of the head waters of the Kinabatangan in the heart of the Company's territory, it would be disastrous if the Dutch could establish a right to take possession of the whole course of the river and its tributaries. If its course should prove to be from north to south, as there seems reason to conclude, Her Majesty's Government must see the immense extent of the injury which would be inflicted on the Company were the Netherlands Government allowed to assert a claim to follow its northward course right through the interior of the territory conceded to the Company by the Sultans, who certainly did not so understand the concessions they were making.

I would point out that at the time the cession of the Sibuco was made by the Sultan of Sulu there was no thought on our part of encroaching on Dutch territory. We could only be guided by the latest published Treaty extant, and by this in 1846 and 1857 the Dutch made no claim north of the Atas River, nor did they attempt to take possession of our territory until some time after the cession had been made to us. Had they been at Batu Tinagat at the time we might then have raised the question of the Sultan's rights.

Of course the contention of the Dutch authorities, that "the country of Tidoeng had from time immemorial been subject to the Sultan of Bulongan, and that the Sultan of Bulongan was the subject of His Netherlands Majesty," begs the whole question in dispute.

All this, however, is matter for settlement between the two Governments of Great Britain and the Netherlands. But as regards the action taken recently by the officials of the Company in placing their flag on the Sibuco—a mere repetition in fact of a protest by the Resident in Sandakan Bay (Mr. Pryer) in July 1880, I am to submit that they were simply exercising the rights claimed by Treaty from the beginning, and recognized so far as the Sultans of Brunei and Sulu had the power to concede such rights. On the other hand, the Dutch authorities have not hesitated, without concert either with the British Government or the Company, to hoist their flag not only at the mouth of the Sibuco, but far north at Batu Tinagat, and to station men-of-war to enforce a claim which they have yet to make good by other means than armed force. Any violation of territory has been on the part of the Dutch authorities, and not of the Company, since, until it be ruled otherwise by Her Majesty's Government, the Company claim the Sibuco River as part of their territory duly ceded by Treaty and recognized by the Royal Charter under the Sign Manual.

I have under these circumstances to urge, on the part of the Court of Directors, the pressing necessity of immediate steps being taken by Her Majesty's Government to determine the boundary of the Dutch territory on the east coast and in the interior, which is in accordance with the request of the Chargé d'Affaires to your Lordship when he says, "dans le seul et unique but de prévenir des collisions entre les autorités Néerlandaises et les employés de la British North Borneo Company." While that boundary remains undetermined, and a subject of contention between the Company and the Dutch Government, it is obvious that a danger of collision must of necessity exist.

The accompanying lithographic copy of a drawing by Mr. H. M. Harrison, Paymaster of Her Majesty's ship "Modeste," showing the position of the flag at Batu Tinagat, is forwarded for your Lordship's information.

I have, &c.

(Signed) RUTHERFORD ALCOCK, *Chairman.*

Annex 15

LETTER FROM W.B. PRYER, RESIDENT, TO JONKHEER H.O. WICKERS, CAPTAIN NETHERLANDS IRON-CLAD, *ATJEH*, 4 JULY 1880, APPENDIX (A) TO INCLOSURE 1 (*MEMORANDUM ON THE NORTH BORNEO CESSIONS*, 28 MAY 1881) TO LETTER FROM SIR R. ALCOCK TO EARL GRANVILLE, 1 JULY 1882

Appendix (A).

Sir,

Elopura, Bay of Sandakan, July 4, 1880.

I have to inform you that the cession from the Sultan of Sulu to the British Association, under whose authority I am here, extends from the River Pandassan, on the north-west coast of Borneo, to the Sibu[illegible] on the east.

I am now informed that you have [illegible]ation at Batu Tinnaga, on the north side of the Sibuco River; this is, however, on territory included in our cession, and I must therefore ask you, with all possible respect, to withdraw.

I may mention that the occupation of Batu Tinnaga was objected to on the spot by Pangeran Belantie, of Omardal, and by Hadji Mahomed Salih, of this place, Sandakan, who was flying our flag at the time. According to the Netherlands Decree of the 28th February, 1846, the boundary line was fixed at 3° 20′ north, the mouth of the Atas River, and I am unaware of any change since.

I have, &c.

(Signed) W. B. PRYER, *Resident.*

Jonkheer H. O. Wickers,
Captain Netherlands Iron-clad, "Atjeh."

Annex 16

EXTRACT FROM THE *NIEUWE ROTTERDAMSCHE COURANT* OF OCTOBER 20, 1879 (TRANSLATED FROM THE DUTCH) STATES-GENERAL, SECOND CHAMBER. *ESTIMATES FOR NETHERLANDS INDIA FOR THE FINANCIAL YEAR 1880*, APPENDIX (B) TO INCLOSURE 1 (*MEMORANDUM ON THE NORTH BORNEO CESSIONS*, 28 MAY 1881) TO LETTER FROM SIR R. ALCOCK TO EARL GRANVILLE, 1 JULY 1882

Appendix (B).

Extract from the "Nieuwe Rotterdamsche Courant" of October 20, 1879.

(Translated from the Dutch.)

States-General, Second Chamber.

Estimates for Netherlands India for the Financial Year 1880.

There is only one efficient course to be adopted "to prevent all foreign intermeddling and more especially the establishment of any authority independent of our own in those parts of the islands in the Indian Archipelago belonging partially to Netherlands territory which are not subject to our sovereignty." This course consists of our establishing our sovereignty in the said regions now, and bringing them under our authority without delay. Anyone who is not desirous of this result, and who in other words "is on the whole no advocate of the extension of our colonial Possessions," subjects himself to the obligations of observing a certain amount of circumspection when it comes to the point of discussing what ought to be done by us in view of the movements undertaken by foreign Powers beyond the frontiers of our territories.

The north-western and north-eastern parts of Borneo have at no time been subject to our authority. The supremacy of Spain over the dominions subject to Sulu, in the north-eastern region, has never been called in question by us. We threw no impediments in the way of the establishment of an European Rajah at Sarawak, vassal of the independent Sultan of Brunei. The Treaty concluded between England and Brunei in 1847, when communicated to us by the British Government in 1849, was merely taken cognizance of as a notification. We did not offer any opposition to the American expedition to the north of Borneo, which was the forerunner of that of Baron von Overbeck. What right and what grounds should we have then for assuming a hostile attitude towards this last expedition.

If there were any question here of an establishment on part of the British Government, we might refer to the general tenour of the Treaty of London of 1824 in order to demonstrate that a mixed occupation by England and the Netherlands of any island in the Indian Archipelago ought to be avoided. But in the present case, it is merely a question of the establishment of an individual Company in pursuance of Concessions granted by native Princes who are independent of our authority. If our special or commercial interests should be prejudiced thereby, it may surely be asserted that the Government will know how to protect Netherlands interests, as circumstances may require, even beyond the frontiers of the Netherlands territories. But there is, as it would appear, but little reason to apprehend any danger to our interests from the undertaking in question, and it would be difficult to prove that our rights are injuriously affected by the Concessions that have been granted. At any rate, this holds good as regards the Brunei Concessions. With respect to the Sulu Concessions, it is not clear whether the Contracting Parties are accurately acquainted with the proper frontier of the Netherlands Possessions on the east coast of Borneo. In order to avoid possible misunderstandings, the Indian Government has issued orders that the Netherlands flag shall be hoisted at the point of demarcation (the Batu Tinagat Rock, at the mouth of the Tawan River, which, according to the last survey, is situated in north latitude 4° 19′ and east longitude 117° 31′), and that for the present it shall be watched by a cruizer, while it has, moreover, addressed a request to the Sultan of Boulongan, to whose territories the said point of demarcation belongs, to place a Representative of his own in residence at that point.

As for the movements that are and have been taking place in the north of Borneo beyond the confines of our territory, as far as the Government, which has been carefully watching the course of affairs from the beginning, has been able to take account of the same, they do not affect our interests any more than they do our rights. It is, however, desirable that we should be accurately acquainted with what is going on in those parts, and it is with this object that they are at the present moment being visited by a man-of-war belonging to the Indian navy, which will shortly be followed by a vessel belonging to the auxiliary squadron.

Annex 17

GENERAL REMARKS MADE BY COUNT BYLANDT IN THE LAST MEETING OF THE COMMISSION ABOUT BORNEO ON SATURDAY THE 27TH OF JULY 1889 (COPY OF THE ORIGINAL AND TRANSCRIPTION) AND LETTER FROM COUNT BYLANDT TO H.E. MR. HARTSEN, 1 AUGUST 1889 (DUTCH ORIGINAL AND ENGLISH TRANSLATION)

General remarks made by Count Bylandt in the last Meeting of the Commission about Borneo on Saturday the 27th of July 1882

As this will probably be the last meeting of our Commission, I wish to present some general remarks on the Borneo question and must beg leave to speak standing, so as not to be interrupted until I have finished to state what I have to say.

My first remark is not of very great importance, but still cannot pass unnoticed. In the protocol of our former meeting, Sir Philip Currie is reported to have said, that in 1879 the then Netherlands Minister for the Colonies (Baron de Goltstein) had *assured* the States General that the concessions granted by the Sultans of Sulo and Broenei to Mess. Overbeck and Dent, did not infringe on Netherlands rights or territory. This is not quite correct. With the official record of that sitting in my hand I can show that the Minister, replying to an interpellation of a Member of the House, simply said that it did not *appear* that our rights had been infringed by the concessions, and that this assumption could not as yet be *proved*. And why not? Because, though the Minister was aware that concessions had been granted, he was at that time utterly unacquainted with their contents and could therefore not expect that our rights would be infringed by a friendly power.

I had several times asked for a copy of those concessions, but I was always met by the reply that the British Government could not dispose of private documents which were not their own property. However, some time later I succeeded in getting a copy of the concessions from Mr. Dent himself and which I sent on to my Government, and when afterwards I was intimated to present the objections of my Government based on the terms of those concessions, as I did by my note of the 8th of April 1881, that note remained unanswered.

But in the meantime, Lord Granville, in his despatch of the 27th of May 1881 addressed to the British Minister at The Hague, complained that the Netherlands Government, before awaiting the promised communication of the draft of the „Charter" had already presented objections based on *unofficial* documents procured by a private person. The principal question is not whether the documents were official or not, but whether what they contained was *true*, and that it was true is sufficiently proved by the fact that they have become official without the slightest alteration, notwithstanding all our timely objections. They became official by being published in the Blue Book Netherlands N°1. (1882). I must confess that up to the present moment I have been unable to explain to myself the reluctance of the British Government to provide a friendly Government with fair information on a subject in which political interests of some importance for my Country were involved.

It is true, we had repeatedly received, verbally and in writing, the most reassuring declarations that we had only to do with a private commercial undertaking of no political character whatever; that there was no question of the British Government settling in North Borneo, nor of a British protectorate there, nor even of the hoisting of the British flag. But all these reassuring and misleading declarations have been belied by subsequent facts. We have been all along kept in the dark and placed, uninformed, before accomplished facts. The draft of the Charter was no doubt communicated to us *by courtesy* a few weeks before it was decided upon, leaving us scarcely the time to consider it and to present our objections. In fact those objections reached me here in London only the day before the meeting of the Privy Council in which the draft of the Charter had to be considered and decided upon; so that this *pro forma* courtesy was practically quite valueless to us.

Still I am convinced that notwithstanding all these painfull and unexpected disappointments in the past, they will have to-day no influence on the sincere desire of the Netherlands Government to come, if possible, to a friendly understanding with the British Government on this subject, and to take into serious consideration any proposal that may lead to that end. But at the same time I must insist that the words I have just spoken should be taken down and recorded in the protocol of our present meeting, because my remarks which are exclusively drawn from your own Blue Book belong to the political history of the subject which has called us here together.

TRANSCRIPTION

General remarks made by Count Bylandt
in the last Meeting of the Commission about Borneo
on Saturday the 27th of July 1889

As this will probably be the last meeting of our Commission, I wish to present some general remarks on the Borneo question and must beg leave to speak standing, so as not to be interrupted until I have finished to state what I have to say.

My first remark is not of very great importance, but still cannot pass unnoticed. In the protocol of our former meeting, Sir Philip Currie is reported to have said, that in 1879 the then Netherlands Minister for the Colonies (Baron de Golstein) had assured the States General that the concessions granted by the Sultans of Sulu and Brunei to Mess. Overbeck and Dent, did not infringe on Netherlands rights, or territory. This is not quite correct. With the official record of that sitting in my hand I can show that the Minister, replying to an interpellation of a Member of the House, simply said that it did not appear that our rights had been infringed by the concessions, and that this assumption could not as yet be proved. And why not? Because, though the Minister was aware that concessions had been granted, he was at that time utterly unacquainted with their contents and could therefore not expect that our rights would be infringed by a friendly power.

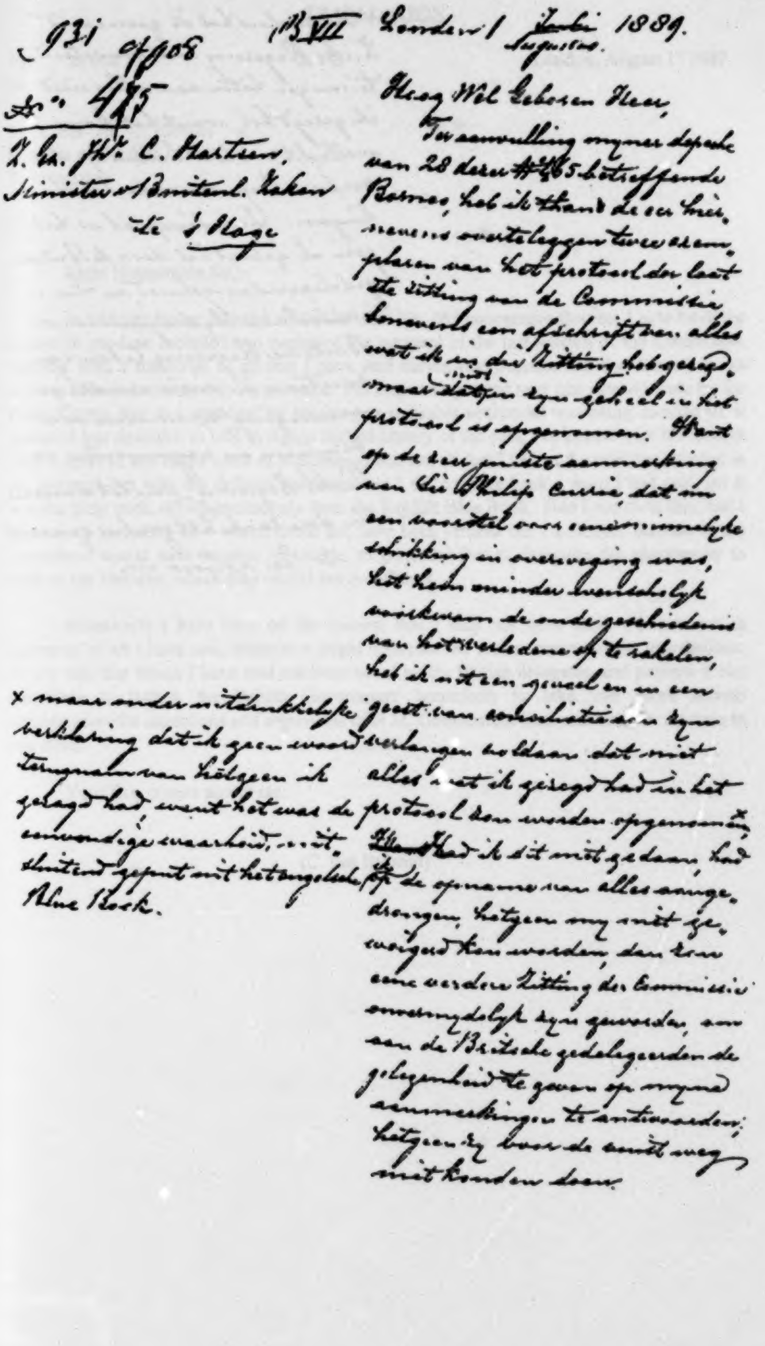
I had several times asked for a copy of those concessions, but I was always met by the reply that the British Government could not dispose of private documents which were not their own property. However, some time later I succeeded in getting a copy of the Concessions from Mr. Dent himself and which I sent on to my Government; and when afterwards I was instructed to present the objections of my Government based on the terms of those Concessions, as I did by my note of the 8th of April 1881, that note remained unanswered.

But in the meantime, Lord Granville, in his despatch of the 27th of May 1881 addressed to the British Minister at The Hague, complained that the Netherlands Government, before awaiting the promised communication of the draft of the "Charter", had already presented objections based on unofficial documents procured by a private person. The principal question is not whether the documents were official or not, but whether what they contained was true, and that it was true is sufficiently proved by the fact that they have become official without the slightest alteration, notwithstanding all our timely objections. They became official by being published in the Blue Book Netherlands No. 1 (1882). I must confess that up to the present moment I have been unable to explain to myself the reluctance of the British Government to provide a friendly Government with fair information on a subject in which political interests of some importance for my country were involved.

It is some time that we had repeatedly received, verbally and in writing, the most reassuring declarations that we had only to do with a private commercial undertaking, of no political character whatsoever, that there was no question of the British Government settling in North Borneo, nor of a British protectorate there, nor even of the hoisting of the British flag. But all these reassuring and misleading declarations have been belied by subsequent

facts. We have been all along kept in the dark and placed, uninformed, before accomplished facts. The draft of the Charter was no doubt communicated to us by courtesy, a few weeks before it was decided upon, leaving us scarcely the time to consider it and to present our objections. In fact those objections reached me here in London only the day before the meeting of the Privy Council in which the draft of the Charter had to be considered and decided upon, so that this pro forma courtesy, was practically quite valueless to us.

Still I am convinced that notwithstanding all these painful and unexpected disappointments in the past, they will have today no influence on the sincere desire of the Netherlands Government to come, if possible, to a friendly understanding with the British Government on this subject, and to take into serious consideration any proposal that may lead to that end. But at the same time I must insist that the words I have just spoken should be taken down and recorded in the protocol of our present meeting, because my remarks, which are exclusively drawn from your own Blue Book, belong to the political history of the subject which has called us here together.



931 4908

B VII

No. 475

Z. Exc. Jhr. C. Hartsen,
Minister v. Buitenl. Zaken
te 's Hage

Londen 1 ~~Juli~~ Augustus 1889.

Hoog Wel Geboren Heer,

Ter aanvulling myner depeche van 28 dezer No. 465 betreffende Borneo, heb ik thans de eer hiernevens over te leggen twee exemplaren van het protocol der laatste zitting van de Commissie, benevens een afschrift van alles wat ik in die zitting heb gezegd, maar dat niet in zyn geheel in het protocol is opgenomen. Want op de zeer juiste aanmerking van Sir Philip Currie, dat nu een voorstel voor eene minnelyke schikking in overweging was, het hem minder wenschelyk voorkwam de oude geschiedenis van het verledene op te rakelen, heb ik uit een gevoel en in een geest van conciliatie aan zyn verlangen voldaan dat niet alles wat ik gezegd had in het protocol zou worden opgenomen.x ~~Want~~ Had ik dit niet gedaan, had ik op de opname van alles aangedrongen, hetgeen my niet geweigerd kon worden, dan zou eene verdere zitting der Commissie onvermydelyk zyn geweest, om aan de Britsche gedelegeerden de gelegenheid te geven op myne aanmerkingen te antwoorden; hetgeen zy voor de vuist weg niet konden doen.

x maar onder uitdrukkelyke verklaring dat ik geen woord terugnam van hetgeen ik gezegd had, want het was de eenvoudige waarheid, uitsluitend geput uit het Engelsche Blue Book.

Intusschen heb ik gemeend Z.M.s Regering niet onwetend te mogen laten van alles wat ik gezegd heb, want het kan wellicht invloed hebben op den verderen loop der onderhandelingen. In ieder geval is hetgeen ik gezegd heb door de Britsche gedelegeerden gehoord, en kan misschien bijdragen om de Britsche Regering te bewegen voortaan in meer ernstige overweging te nemen de bewijzen en argumenten van Z.M.s Regering dan tot dusverre in deze zaak het geval is geweest.

U. Ex. gelieve enz.

TRANSLATION

931 **of 908** **B VII** **London, August 1st 1889**
No. 475

To H. Exc. **Jhr. C. Hartsen**
Minister of Foreign Affairs
The Hague

Right Honourable Sir,

In addition to my dispatch of the 28th inst No. 465 concerning Borneo, I now have the honour to produce enclosed two copies of the protocol of the last session of the Committee, together with a transcript of all that I have said during that Session, but that has not in its entirety been incorporated in the protocol. For responding to the very just remark made by Sir Philip Currie, that as a proposal for reaching an amicable settlement was being considered, it appeared less desirable to him to dig up the old history of the past, I complied with his request from a sense of and in the spirit of conciliation that not all that I had said would be included in the protocol, but with the definite statement that I did not take back a word I had said, for it was the plain truth, drawn exclusively from the English Blue Book. Had I not done this, had I insisted on including all - which could not have been refused me - a further Session of the Committee would have become inevitable, to grant the British delegates the opportunity to reply to my remarks, which they would not do offhand.

Meanwhile I have been of the opinion that I may not keep H.M. Government in ignorance of all I have said, because it might influence the further course of the negotiations. At any rate that which I have said has been heard by the British delegates, and perhaps it can contribute to induce the British Government henceforth to take into more serious consideration the objections and arguments of H.M. Government than was hitherto the case in this affair.

Your Exc. please accept etc.

(C. van Bylandt)

Annex 18

CONVENTION BETWEEN FRANCE AND CHINA, CONCERNING THE IDENTIFICATION OF THE BOUNDARY BETWEEN CHINA AND TONKIN, SIGNED IN PEKIN, 26 JUNE 1887, AND SUPPLEMENTARY CONVENTION, 20 JUNE 1895, PRESCOTT, J.R.V., *MAP OF MAINLAND ASIA BY TREATY*, MELBOURNE UNIVERSITY PRESS, 1975, PP. 453-456

Map of Mainland Asia by Treaty

J. R. V. PRESCOTT

Published in association with
the Australian Institute of
International Affairs

MELBOURNE UNIVERSITY PRESS
1975

Convention, 26 June 1887

The Commissioners named by the President of the French Republic and His Majesty the Emperor of China, in execution of Article three of the Treaty of 9 June 1885, for the identification of the boundary between China and Tonkin have finished their work.

M. Ernest Constans, former deputy Minister of the Interior and Culture, Government Commissioner, special envoy of the French Republic on the one part,

And His Excellency Prince K'ing, Prince of the Second Rank, President of the Tsung-li Yamen, assistant of His Excellency Souen-Yu Ouen, Member of the Tsung-li Yamen, First Vice-President of the Ministry of Public Works;

Acting in the names of their Governments;

Have decided to record in the present document the following arrangements designed to govern the delimitation of the said boundary:

1. The reports and maps which are annexed have been prepared by the French and Chinese Commissioners and are approved;

2. The points on which agreement could not be reached between the two commissioners, and the corrections allowed by the second paragraph of the third article of the Treaty of 9 June 1885, are also ruled on as follows.

At Koueng-Tong it is understood that the disputed points, which are situated east and northeast of Monkai, beyond the boundary fixed by the Commissioners, are allocated to China. The islands which are east of the Paris meridian of 105° 43′ east (108° 3′ east of Greenwich), that is to say the north–south line passing through the eastern point of the island of Tch'a Kou or Ouan-Chan (Tra-co), which forms the boundary, are also allocated to China. The island of Gotho and other islands west of this meridian belong to Annam.

Chinese guilty or accused of crimes or misdemeanours who seek refuge in these islands, will, in accordance with the stipulations of Article 17 of the Treaty of 25 April 1886, be sought, arrested and extradited by the French authorities.

On the boundary of Yunnan it is understood that the demarcation follows the following line:

From Kaou-teou-tchai (Cao-dao-trai) on the left bank of Siao-tou-tcheou-ho (Tien-do-Chu-ha), point M on the map of the second section, it goes for fifty li (20 kilometres) directly from west to east leaving to China the districts of Tsui-kiang-cho or Tsui-y-cho (Tu-nghia-xa), Tsui-mei-cho (Tu-mi-xa) Kiang-fei-cho or Y-fei-cho (Nghia-fi-xa) which are north of this line, and to Annam, that of Yeou-p'ong-cho (Hu-bang-xa) which is east and south, as far as the points marked P and Q on the annexed map, where it cuts both branches of the second tributary on the right bank of Hei-ho (Hac-ha) or Tou-tchoou-ho (Do-chu-ha). Leaving point Q it heads towards the southeast for about fifteen li (six kilometres) as far as point R, leaving to China the territory of Nan-tan (Nam-dan) to the north of this point R; then leaving this point, ascending towards the north-east as far as point S, and following the direction traced by the line R-S the course of the Nan-tang-ho (Nam-dang-ha) and the territories of Man-Mei (Man-mi), of Meng-toung-chang-ts'oun (Muong-dong-truong-thon) of Meng-toung-chan (Muong-dong-son), of Meng-toung-tchoung ts'oun (Muong-dong-truong-thon), and of Meng-toung-chia-ts'oun (Muong-dong-ha-thon) remaining to Annam.

Leaving point S (Meng-toung-chia-ts'oun or Muong-dong-ha-thon) the middle of the Ts'ing-chouei-ho (Than-thuy-ha), as far as its confluence at T, with the river Claire, marks the boundary which has been adopted.

From point T the line is marked by the middle of the river Claire as far as point X above Tch'ouan-teou (Thuyen-dan).

From point X it ascends towards the north as far as point Y passing Paiche-yai (Bach-thach-giai) and Lao-ai-k'an (Lao-hai-kan) so that half of each of these districts belongs to China and Annam, that which is to the east belongs to Annam, that which is to the west to China.

Leaving point Y it follows in a northerly direction the right bank of the small left bank tributary of the river Claire, which it receives between Pein-pao-kia (Bien-bao-kha) and Pei-pao (Bac-bao) and reaches Kao-ma-pai (Cao-ma-bach), point Z, where it meets the boundary of the third section.

Leaving Long-po-tchai (fifth section) the boundary between Yunnan and Annam ascends the course of the Long-po-ho as far as its confluence with the Ts'ing-chouei-ho, marked A on the map; from point A it follows a general northwest–southeast direction as far as the point marked B on the map, the area where the Sai-kiang-ho receives the Mien-chouei-ouan; the course of the Ts'ing-chouei-ho is allocated to China.

From point B the boundary goes in an east–west direction as far as point C, where it meets the Teng-tiao-tchiang below the Ta-chou-tchio. That area which is south of this line belongs to Annam, that which is to the north belongs to China.

From point C it descends towards the south and follows the middle of the river Teng-tiao-tchiang as far as its confluence, at point D, with the Tsin-tse-ho.

It then follows the Tsin-tse-ho for about thirty li and continues in an east-west direction as far as point E where it meets a small stream which flows into the Black river (Hei-tciang or Hac-giang) east of the Meng-pang ferry. The middle of this stream is the boundary from point E to point F.

Leaving point F the middle of the Black river marks the boundary to the west.

The local Chinese authorities and the agents designated by the Resident General of the French Republic in Annam and Tonkin are charged to proceed with the demarcation of the line, conforming to the maps prepared and signed by the Commissioners and the description above.

To the present Act are annexed two copies of three maps signed and sealed by both Parties. On these maps the new boundary is marked by a red line and shown on the maps of Yunnan by letters of the French alphabet and cyclical Chinese characters.

Done in Peking in two copies 26 June 1887

Constans
K'ing

Supplementary Convention, 20 June 1895

The Commissioners named by the two Governments for the purpose of exploring the remaining portion of the frontier between China and Tongking (from the Red River to the Mekong) having terminated their labours:

M. Auguste Gerard, Minister Plenipotentiary, Envoy Extraordinary of the French Republic, in China, Officer of the Legion of Honour, Grand Cross of the Order of the Independence of Montenegro, Grand Officer of the Royal

Order of Charles III of Spain, Grand Officer of the Royal Order of the Crown of Italy, etc., on one part;

And His Highness Prince K'ing, Prince of the first rank, President of the Tsung-li Yamen, etc:

And his Excellency Siu Yong-Yi, member of the Tsung-li Yamen and of the Great Council of the Empire, Vice-President of the Left in the Ministry of the Interior, etc., on the other part.

Acting in the name of their respective Governments, and furnished with full powers to that effect, which, after being communicated by one to the other, have been admitted to be in good and proper form, have decided to embody in the present Act the following provisions for the purpose of rectifying and completing the Convention signed at Peking on the 26 June 1887; the records of the discussions and the maps which have been drawn up and signed by the French and Chinese Commissioners being and standing approved.

Article I

The line of the frontier between Yunnan and Annam (map of the second section) from point R to point S, is altered as follows:—

"The frontier-line starts from point R, proceeds to the north-east as far as Man-mei, then from Man-mei and following a west and east course as far as Nan-na, upon the Tsing-chuiho, leaving Man-mei to Annam and the territories of Mong-t'ong-chang-ts'uen, Mong-t'ong-cho, Mong-t'ong-chong-ts'uen, and Mong-t'ong-hai-ts'uen to China.

Article II

The line of the fifth section between Long-po-chai and the Black River is altered as follows:—

"On leaving Long-po-chai (fifth section) the common frontier of Yunnan and Annam ascends the course of the Long-po-ho as far as its confluence with the Hong-Yaiho to the point marked A on the map. From point A it follows a generally north-north-westerly direction and the water-parting as far as the point where the P'ing-ho rises.

"From this point the frontier follows the course of the P'ing-ho, then that of the Mu-k'i-ho as far as its confluence with the Ta-pao-ho, which it follows as far as its confluence with the Nan-Kong-ho, then the course of the Nan-Kong-ho as far as its confluence with the Nan-na-ho.

"The frontier then ascends the course of the Pa-Pao-ho as far as its confluence with the Kwang-Si-ho, then the course of the Kwang-Si-ho, and follows the water-parting as far as the confluence of the Nam-la-pi and Nam-la-ho, finally the Nam-la-ho as far as its confluence with the Black River, then the middle of the Black River as far as the Nam-nap or Nan-ma-ho".

Article III

The common frontier of Yunnan and Annam between the Black River, to its confluence with the Nam-nap, and the Mekong is drawn as follows:—

On quitting the confluence of the Black River and the Nam-nap, the frontier follows the course of the Nam-nap as far as its source, then the water-parting in a south-westerly and westerly direction, as far as the source of the Nam-Kang and the Nam-wu.

On quitting the sources of the Nam-wu, the frontier follows the water-parting between the basin of the Nam-wu and the basin of the Nam-la, leaving to China, to the west, Ban-noi, I-pang, I-wu, and the six tea mountains, and to Annam, to the east, Mong-wu and Wu-te and the confederation of the Hua-panh-ha-tang-hoc. The frontier follows a north and south direction, south-east as far as the sources of the Nan-nuo-ho, then it circles along the water-parting in a west-north-west direction, round the valleys of Nan-wo-ho and the left-hand affluents on the Nam-la, as far as the confluence of the Mekong and the Nam-la, to the north-west of Mong-pong. The district of Mong-mang and Mong-juen is left to China. The district of the eight salt springs (Pa-fa-chai) remains assigned to Annam.

Article IV

The Agents, Commissioners, or authorities nominated by the two Governments shall be instructed to mark out the frontier according to the maps drawn up and signed by the Boundary Commission and to the above line.

Article V

The arrangements respecting the boundary between France and China, which are not altered by the present Act, remain in full force.

The present Supplementary Convention, as well as the Boundary Convention of the 26 June 1887, shall be ratified forthwith by the Emperor of China and, after it shall have been ratified by the President of the French Republic, the exchange of ratifications shall take place at Peking with the least possible delay.

Done at Peking, in quadruplicate, 20 June 1895, corresponding to the twenty-eighth day of the fifth moon of the twenty-first year Kwang-Siu.

A. GERARD.
K'ING.
SIU.

Annex 19

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THE OXFORD ENGLISH DICTIONARY

SECOND EDITION

Prepared by

J. A. SIMPSON *and* E. S. C. WEINER

VOLUME I

A–Bazouki

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minded reader, that if the Industrial Relations Bill becomes law, it will not be only Ireland that is saddled with an IRA! 1972 *Sat. Rev.* (U.S.) 3 June 30 Nitrogen oxide, acronymed NOx, is another of the plant's noxious by-products. 1981 *Amer. Speech* LVI. 63 *Byte* is a fairly far-fetched way of acronymizing *binary digit eight*. 1982 *Maledicta* V. 90 Who were the real 'villains', acronymically speaking? 1983 *Yorkshire Spring* 2/2 Poolies play *puck* (ice hockey) or *hoop* (basketball, also acronymed as *b-ball*).

acrook (əˈkrʊk), *adv.*, prop. *phrase.* [A *prep.*¹ + CROOK.] In a bend or curve; awry, crookedly.

1480 CAXTON *Descr. Brit.* 12 Humbre renneth fyrst a crook oute of the southside of York. *a* 1500 *Court of Love* liv. And truly als the matter is acrooke. 1553 UDALL *Roister Doister* (1869) 62 This geer goth acrook. 1882 MISS ROSSETTI *A Pageant* 177 Our spirits immersed In wilfulness, our steps run all acrook.

acroparæsthesia (ˈækrəʊpærɪsˈθiːzɪə, -ɛs-). *Path.* [f. ACRO- + PARÆSTHESIA.] A disease marked by vasomotor changes in peripheral parts of the body.

1894 *Med. News* LXV. 178/2 (*title*) The Treatment of Acro-Paresthesia (Numbness of the Extremities). 1900 *Lancet* 23 June 1791/2 The affection called 'acroparæsthesia' has..not been described as occurring in this country, though it undoubtedly does occur. 1968 *Practitioner* Aug. 268 Stengel discusses..cases in which numbness, tingling, burning, and other symptoms..known collectively as 'acroparæsthesia', occur in elderly persons who have different degrees of arterio-sclerosis.

acropetal (əˈkrɒpɪtəl), *a. Veg. Phys.* [mod. f. Gr. ἄκρο- (see ACRO-) + L. *pet-ĕre* to seek + -AL¹, after analogy of *centripetal.*] Tending towards the summit or apex; said of the order in which the parts of a plant arise, when the course of development is from below upward.

1875 BENNETT & DYER *Sachs' Bot.* 149 Similar lateral members usually arise on the common axial structure in acropetal or basifugal order, *i.e.* the younger a member is, the nearer it is to the apex; counting from below upwards the members arise in the order of their age. 1882 *Nature* No. 636, 236 Is the ramification in plants everywhere and always acropetal? by M. Trécul. He is led to a negative.

acropetally (əˈkrɒpɪtəlɪ), *adv. Veg. Phys.* [f. prec. + -LY².] In an acropetal manner; with development from below upwards.

1878 M'NAB *Bot.* 66 Secondly, the root does not develope leaves acropetally.

acrophobe (ˈækrəʊfəʊb). [f. ACRO- + -PHOBE: see ACROPHOBIA.] One who suffers from a morbid dread of heights.

1955 M. MCCARTHY *Charmed Life* v. 105 She used to force herself..like an acrophobe who makes himself look over a parapet. 1960 'A. BURGESS' *Doctor is Sick* i. 9 Edwin was an acrophobe. His head began to spin. 1972 L. HANCOCK *There's a Seal in my Sleeping Bag* v. 95 For acrophobes like me the height of the grass blotted out the long drop to the sea.

acrophobia (ækrəʊˈfəʊbɪə). [f. ACRO- + PHOBIA.] Morbid dread of heights. Hence **acroˈphobic** *a.*

1892 D. H. TUKE *Dict. Psychol. Med.* 670 *Acrophobia*, described by Dr. Andrea Verga, means the dread of being in high places. 1899 *Allbutt's Syst. Med.* VII. 886 Both agoraphobia and acrophobia are common forms of imperative ideas. 1959 *New Yorker* 24 Oct. 34/3 We walked over to the winding parapet,..took a shuddering, acrophobic look down the well.

acrophonetic (ˌækrəʊfəʊˈnɛtɪk), *a.* [mod. f. Gr. ἄκρο-, see ACRO- + φωνητ-ός to be uttered + -IC.] Pertaining to acrophony.

1866 FELTON *Anc. & Mod. Greece* I. iii. 49 The principle of this alphabetic element has received the technical name of acrophonetic, or the principle of initial sounds.

acrophonic (ækrəʊˈfɒnɪk), *a.* [f. ACROPHON(Y + -IC.] Pertaining to acrophony.

1909 in *Cent. Dict.* Suppl. 1932 *Times Lit. Suppl.* 7 Jan. 13/1 The Hittite pictographic script which he thought was acrophonic. 1959 A. G. WOODHEAD *Gr. Inscriptions* 18 The Greek names for the letters of the alphabet are acrophonic, the first letter of the name expressing the sound of the letter to which the name is given.

acrophony (æˈkrɒfənɪ). [mod. f. Gr. ἄκρο- (see ACRO-) + -φωνία voice, sound.] The sound of the initial; the use of what was originally a picture-symbol or hieroglyph of an object to represent phonetically the initial syllable or sound of the name of the object; *e.g.* employing the symbol of an *ox*, '*aleph*,' to represent the syllable or letter *a*.

1880 R. S. POOLE in *Encycl. Brit.* IV. 808 The Phœnician letters had names indicating an origin from a hieroglyphic system on the same principle of acrophony.

Acropolis (əˈkrɒpəlɪs). [Gr. ἀκρόπολις, f. ἄκρο- (see ACRO-) + πόλις city. (The pl., rarely used, would be analogically *acropolēs*; we find the Gr. ἀκροπόλεις simply transliterated.)] The elevated part of the town, or the citadel, in a Grecian city; *esp.* that of Athens. Also *fig.*

1662 MORE *Antid. agst. Ath.* II. xii. (1712) 79 As if Nature kept garrison in this *Acropolis* of Man's body, the Head. 1840 ARNOLD *Hist. Rome* II. 428 The Acropolis of Corinth was held by one Alexander. 1850 LEITCH tr. *Müller's Anc. Art* §168. 146 Massive walls..surround their cities, not merely their acropolis. 1876 HUMPHREYS *Coin Coll. Man.* vi. 63 In Athens the weights connected with the coinage were kept with great care in the Acropolis.

† **acrosaline**, *a. Obs.* [improp. f. L. *acris* sharp, pungent + SALINE.] Salt and acrid.

1782 *British Mag.* II. 117 The urine remarkably acrosaline.

acroscopic (ækrəʊˈskɒpɪk), *a. Bot.* [f. Gr. ἄκρον apex + -σκοπος viewing + -IC.] Looking, or on the side, towards the apex.

1882 VINES tr. *Sachs' Bot.* 430 In *Azolla*, the leaves of the one row all arise from one cell of the acroscopic part of the segment.

acrosome (ˈækrəsəʊm). *Zool.* [ad. G. *akrosoma* (M. von Lenhossék 1898, in *Archiv. Mikrosk. Anat.* LI. 282), f. ACRO- + *-some* (cf. Gr. σῶμα body).] A cap-like structure forming the anterior part of the head of a spermatozoon. Hence **acroˈsomal**, **acroˈsomic** *adjs.*

1899 J. H. MCGREGOR in *Jrnl. Morphology* XV. Suppl. 91 For this body in mammals Lenhossék proposed the term 'Akrosom', and throughout the present paper I shall call it the *acrosome*. *Ibid.* 93 The attachment of acrosome to nucleus marks the anterior end of the spermatid from the start. 1940 *Chambers's Techn. Dict.* 10/1 Acrosomal. 1951 G. H. BOURNE *Cytol. & Cell Physiol.* (ed. 2) vi. 271 There is evidence..that the [Golgi] apparatus is associated with..the formation of fatty yolk in eggs, and of the acrosome in spermatozoa. 1952 *Amer. Jrnl. Anat.* XC. 169 One to four granules..coalesced, forming one larger structure, the acrosomic granule. 1960 L. PICKEN *Organization of Cells* vi. 231 The 'acrosomic system' (that is, acrosome, head-cap, and precursors). *Ibid.* 233 The acrosomal vesicle containing the acrosome.

acrospire (ˈækrəspaɪə(r)), *sb.* Also *Obs.* or *dial.* **ackerspyre, akerspire.** [f. Gr. ἄκρο- (see ACRO-) + σπεῖρ-α anything twisted, or σπείρ-ειν to sow.] 'The first leaf that appears when corn sprouts; it is a developed plumule.' Lindley *Treas. of Bot.*

1674 GREW *Anat. Plants* I. i. §13 (1682) 3 In corn, it is that Part, which after the Radicle is sprouted forth, or come, shoots towards the smaller end of the Grain, and by many Maltsters, is called the Acrospire. 1858 MAUNDER *Scient. Treas.* 443 By the aid of moisture, the barley is made to germinate, that is to put forth roots and almost its acrospire or first sprout; and by the aid of fire, the roots are destroyed and the acrospire prevented from bursting the skin.

acrospire (ˈækrəspaɪə(r)), *v.* Also 7–8 **akerspire.** [f. prec.] To throw out the first leaf-sprout.

1616 SURFLET & MARKH. *Countrey Farme* 557 Turne the malt vpon the floore twice or thrice a day, least forbearing so to doe, the corne heat, and by that meanes aker-spire, which is, to sprout at both ends, and so loose the heart of the graine, and make the malt good for nothing. 1742 *Lond. & Country Brewer* I. (ed. 4) 6 Turning the Malt often, that it neither moulds nor aker-spires.

acrospired, *ppl. a.* [f. ACROSPIRE *v.* + -ED.] Furnished with an acrospire, having the first leaf-sprout.

a 1733 MORTIMER (J.) For want of turning, when the malt is spread on the floor, it comes, and sprouts at both ends, which is called acrospired, and is fit only for swine.

acrospiring, *vbl. sb.* [f. ACROSPIRE *v.* + -ING¹.] Sprouting into leaf.

1725 BRADLEY *Fam. Dict.* s.v. *Malt*, If to prevent the acrospiring it be thrown thin, many of the Corns will dry.

acrospore (ˈækrəspɔə(r)). *Bot.* [f. Gr. ἄκρο- (see ACRO-) + σπόρ-ος fruit: see SPORE.] A spore produced at the apex of a hypha or cellular filament forming the structural element of fungi; a basidiospore.

1870 H. MACMILLAN *Bible Teachings* vi. 127 No less than four kinds of fructification—spores, acrospores, zoospores, oospores—have been discovered on the same plant.

acrosporous (æˈkrɒspərəs), *a. Bot.* [f. prec. + -OUS.] Pertaining to or characterized by acrospores.

1870 BENTLEY *Bot.* 379 All Fungi which thus bear their spores on the outside of peculiar cells or basidia, have been called Basidiosporous or Acrosporous.

across (əˈkrɒs), *adv.*, *prep.* and *adj.* Also aphetically **cross.** [A *prep.*¹ in + CROSS. Cf. Fr. *encroix*, whence Caxton's *in cross*, perh. the earliest form.]

A. *adv.*

1. In the form of a cross, crosswise, crossing each other, crossed.

1480 CAXTON *Chron. Eng.* ccxiv. 170 Syr hugh spencer..fell doune vpon the grounde by the see bank acros with his armes and thryes kist the grounde. 1485 —— *Chas. the Gt.* 239 He layed hys armes vpon hys body in maner of a crosse. *Ibid.* 240 He fonde Rolland expyred, hys handes in crosse vpon hys vysage. 1590 WEBBE *Travailes* (1868) 25 Two knives are layde acrosse vpon the knife. 1649 H. LAWRENCE *Comm. & Warre w. Angels* 117 Thinke not to goe to heaven with your armes acrosse. 1772 FOOT *Penseroso* III. 130 Yonder, tow'rds the east A warrior frowns in stone, his legs across. 1826 WORDSWORTH *Poems on Affec.* xi. Wks. 1849 I. 152 Pine not like them with arms across.

2. a. In a position or direction crossing the length-line of anything, transversely; hence, from side to side, or corner to corner, through.

1523 Fitzherbert *Husb.* (1534) F 3 The whiche blynne must be done with a brysle a-crosse. 1601 Shaks. *Twel. N.* v. i. 178 H'as broke my head a-crosse, and has given Sir Toby a bloody Coxcombe too. 1774 *Phil. Trans.* LXIV. 225 I found it impossible to saw it directly a-cross. 1852 Mrs. Stowe *Uncle Tom's C.* ix. 71, I jumped right on to the ice, and how I got across I don't know. *Mod.* Was the Channel rough when you came across?

b. *Naut.*

1633 Stafford *Pac. Hib.* viii. (1821) 325 And ride with their yards a crosse. 1794 Nelson in Nicolas's *Disp. & Lett.* (1845) I. 504 [Ships] of the Line, sails bent, some with top-gallant yards across.

c. ***to come across (with)***: to hand over, contribute (money, information, etc.). *slang* (orig. *U.S.*).

1910 *Sat. Even. Post* 13 Aug. 8/1, I knew pull was required but I hadn't learned that I'd have to come across with the price as well. 1915 J. London *Jacket* viii. 60 You might as well come across now and save trouble. 1928 D. Sayers *Lord Peter views Body* 16, I think you ought to come across with the rest of the story. 1938 Wodehouse *Summer Moonshine* ix. 99 He hinted that one had got to come across. 1948 M. Allingham *More Work for Undertaker* xxii. 311 'Did she admit it?' 'Yes... But she wouldn't come across till down.'

d. Of a crossword clue: relating to a word that is to be written in on a horizontal line of the puzzle; of the solution to such a clue or the spaces in which it is to be written: along a horizontal line of the puzzle. Often after the clue number. Cf. down *adv.* 1 b.

1924 C. Layng *Cross-Word Puzzles* 7 We now have...the first two letters of No. 7 across. 1944 T. A. Boty *How to solve Crossword Puzzles* i. 5 Avoid two-letter spaces, either Across or Down. 1960 G. W. Target *Teachers* 47 'Good morning, Purnell,' said Woodgate from about seven across and nine down in his crossword, 'though it's really rather cold, isn't it?' 1972 R. Rendell *One Across* iii. 30 He filled in 28 across, which completed his puzzle. 1986 *Times* 5 Sept. 12/2 His technique is to start at 1 across and then go to 1 down.

3. In a position actually or potentially the result of crossing anything; on the other side.

1816 Scott *Old Mort.* 146 Lord Evandale..was no sooner across than he was charged by the left body of the enemy's cavalry. *Mod.* At this rate we shall soon be across.

4. Not straight or directly; obliquely, athwart, awry, amiss. *Obs.* exc. *dial.* Cf. B. 1 c.

1559 *Mirr. for Mag.* 344 (T.) When king and queen saw things thus go across, To quiet all, a parliament they called. 1615 Bp. Hall *Contempl.* iii. vii. 64 The squint-eyed pharisees looke a-crosse at all the actions of Christ. 1687 R. L'Estrange *Answ. Dissenter* 8 This Gentleman will needs set them on a-Cross, and then Exclayme against th[illegible] 'the most Contrary Things in the World]. 1887 Bar[illegible]ld *Red Spider* I. vii. 110 When folks who look acro[illegible]t before them fall across. *Ibid.*, The two who have got a[illegible]. 1892 S. Weyman *New Rector* ix. 173 Lindo must[illegible] are of getting across with him. 1892 *Cornh. Mag.* July 20 Matters were soon across again between the pair. 1897 *Daily News* 4 Mar. 6/1 He is getting across with the farmers now, for he roundly rates them on account of their apathy.

B. *prep.* [The adv. with obj. expressed.]

1. Direction: In a direction forming a cross with, or transverse to; **a.** at right angles with.

1634 Brereton *Trav.* (1844) 45 A long table...placed length-ways in an aisle which stands over across the church. 1697 Potter *Antiq. Greece* I. viii. (1715) 42 A Partition...reaching quite cross the Theater. 1742 Young *Night Th.* iv. 721 Faith builds a bridge across the gulph of death. 1816 J. Wilson *City of Plague* i. i. 77 How idly hangs that arch magnificent, Across the idle river. 1830 Tennyson *Lady Clare Vere* 31 But there was that across his throat Which you had hardly cared to see. 1860 Tyndall *Glaciers* i. §12. 81 A line set across the fissured portion [of the ice].

b. at any angle with; sideways or obliquely against. ***to come across***: to come upon or meet obliquely, indirectly, or unintentionally.

a1626 Bacon (T.) The harp hath the concave not along the strings, but across the strings. 1747 Collins *The Passions* (1830) 61 When Cheerfulness, a nymph of healthiest hue, Her bow across her shoulder flung. 1816 J. Wilson *City of Plague* ii. ii. 211 Across our gracious lady's bed A blast hath come as from the grave. 1860 Dickens *Uncom. Trav.* vii. (1866) 49/2 A wind very like the March east wind of England, blew across me. 1876 Freeman *Norm. Conq.* III. xii. 191 We come across more than one incidental mention of those wars. *Mod.* I ran across him in the City yesterday.

c. ***to get across***: to annoy, get on the wrong side of (someone). *slang*.

1926 D. Sayers *Clouds of Witness* i. 30 One was always getting across Denver, but it never came to anything. 1960 M. Stewart *My Brother Michael* xiv. 183 He's got across that damned Greek.

2. a. Motion: From side to side of; quite through, over, in any direction except lengthwise. ***across the country***: straight through between two points, without regard to the regular roads; not along the regular roads. ***across lots*** (U.S.): see lot *sb.* 6 a.

1591 Shaks. *1 Hen. VI*, iv. i. 114. I charge thee waft me safely crosse the Channell. 1611 — *Wint. T.* iv. iv. 15 When my good Falcon made her flight a-crosse Thy Fathers ground. 1728 Thomson *Spring* 430 You, now retiring, Following now Across the stream, exhaust his idle rage. 1784 Cowper *Task* vi. 273 Pushing iv'ry balls Across a velvet level. 1832 Tennyson *Miller's Dau.* 32 After dinner talk Across the walnuts and the wine. 1849 Macaulay *Hist. Eng.* I. 573 He was directed to hasten thither across the country. 1866 Geo. Eliot *Felix Holt* xlvi. 400 A sort of gleam seemed to shoot across his face. 1866 J. Martineau *Ess.* I. 172 A footman will run your errand across the town. 1876 G. O. Trevelyan *Life & Lett. Macaulay* II. i. 16 All his associations and his traditions caught at once across his memory. 1879 Tennyson *Lover's T.* 9 Permit me, friend, I prythee, To pass my hand across my brows.

b. Phr. ***across the footlights***: from the performers to the audience; hence advb. (by ellipsis) in *to get* or *come across* (*to*), to reach the audience or the public, to make oneself or itself understood or appreciated; similarly *to get it across*. (For *to put it across* see put *v.*¹)

1894 G. B. Shaw *Let.* 11 June (1965) 442, I want to see how much of it they succeed in getting across the footlights. 1913 Kipling *Diversity of Creatures* (1917) 190 Tell a fellow now, did I get it across? 1921 *Sat. Westm. Gaz.* 27 Aug. 14/2 Some vitality that may be as far away as you like from life-likeness..but nevertheless gets across to the reader from the writer. 1923 Silberrad *Lett. Jean Armiter* vi. 148 Sorry—my fault—one fails to get across. 1929 *Westm. Gaz.* 27 Feb., It is very doubtful whether the play would get across the footlights in an ordinary run. *Ibid.* 26 Mar., 'Magda', dressed as a comedy of manners of a hundred years ago, would probably come across more satisfactorily than it does played as...contemporary tragedy. 1927 *Observer* 16 Oct. 15/3 The lower comedy is at present in the making, but Miss B. C., Mr. E. M. and Mr. L. H. are experts at getting it across. 1927 *Daily Tel.* 19 July 12/4 The Earl of Birkenhead ..said..he had never succeeded in projecting his personality across the footlights.

c. ***across the board*** (esp., with hyphens, as *attrib. phr.*). (See quot. 1950.) *U.S.*

1950 Webster *Addenda*, *Across-the-board*, embracing all classes or categories without exception;—from placing a combination wager on a race horse to win, place, or show, that is, betting 'across the board'; as, an across-the-board tax cut. 1958 *Listener* 24 July 116/2 There is a common cliché among labour relations specialists in the United States that it is not the across-the-board wage increase..which is decisive. 1961 *Flight* LXXX. 134/2 There has been no across-the-board reduction since tourist fares were introduced eight years ago. 1964 R. D. Hoover in I. L. Horowitz *New Sociology* xix. 317 Job displacement...is occurring right across the board.

d. Distribution: from one side of (a country, etc.) to the other; throughout. Chiefly *N. Amer.*

1950 [see sense 2 c]. 1961 L. Hughes *Ask your Mama* 43 They know me, too, downtown, All across the country, Europe—Me who used to be nobody. 1968 *Globe & Mail* (Toronto) 17 Feb. 5/7 The teen-agers arrive with a petition that has been going around high schools across the province since the fall. 1976 *Times* 10 Mar. 16 The money raised in Oxfam shops across Britain goes to create employment opportunities...in poor countries throughout the world.

3. Position: On the other side of, beyond, over.

c1790 *Jacobite Toast*, 'The King across the water!' 1855 Tennyson *Daisy* 92 To lands of summer across the sea. *Mod.* The great republic across the Atlantic.

C. *adj.* Of a crossword clue: referring to a word that fills spaces along a horizontal line of the puzzle. See sense 2 c of the adv. Cf. down *a.* 1 f.

1925 C. Layng *Layng's Junior Cross-word Puzzles* 8 Running slowly through the 'across' definitions. 1963 D. St. P. Barnard *Anat. Crossword* ii. 37 Some enthusiasts even went to the extent of making a duplicate pattern and working the Across clues on one, and the Down clues on the other. 1986 *Times* 5 Sept. 12/2, I believe that setters usually start with the Across clues... The Down clues..are usually easier.

†**acrossed** (əˈkrɒst), *ppl. a.* *Obs.* *rare*⁻¹. [Apparently a blending of across and crossed. See across A. 1.] Crosswise, crossed.

1548 W. Thomas *It. Gram.* (1567) *Rannicchiare*, to sit vpon the legges acrossed, as the taylours vse to doe.

acrost (əˈkrɒst), *adv.* and *prep.* *U.S. dial.* and *colloq.* [f. across *adv.* and *prep.* + inorganic -*t*.]

A. *adv.* Across; from side to side.

1779 W. McKendry *Jrnl.* 6 Sept. in *Proc. Mass. Hist. Soc.* (1886) II. 467 The Lake...is...about 8 miles acrost. 1848 F. M. Whitcher *Widow Bedott Papers* (1856) vii. 77 Kier said he hoped her stretch her neck acrost and whisper. 1908 *Dial. Notes* (Boston, Mass.) III. 283.

B. *prep.* Across; *come acrost*, come upon.

1759 in *Essex Inst. Hist. Coll.* (1880) XIX. 145 Ye enemy fird at our men a Crost ye River. 1831 *Louisville* (*Ky.*) *Advertiser* 17 Oct., I came acrost a feller...fast asleep. 1852 Stowe *Uncle Tom* xxii, A good, round, school-boy hand, that Tom said might be read 'most acrost the room'. 1926 F. Lynde *Quickening* i A-smashin' the whisky jug acrost the wagon tire.

acrostic (əˈkrɒstɪk), *sb.* and *a.*¹ Also 6–8 acrostick(e, 7 achrostiche, acrostique, 7–8 acrostich. [ad. L. *acrostichis*, a. Gr. ἀκροστιχίς, f. ἀκρο- (see acro-) + στίχος a row, order, line of verse. Occurs in the L. form as late as 1642. The etymological spelling is *acrostich*, as in *distich*. Cf. Fr. *acrostiche*.]

A. *sb.*

1. A short poem (or other composition) in which the initial letters of the lines, taken in order, spell a word, phrase, or sentence. Sometimes the last or middle letters of the lines, or all of them, are similarly arranged to spell words, etc., whence a distinction of *single*, *double*, or *triple* acrostics. See also telestich.

1587 Golding *De Mornay* xxxii. 508 Cicero..maketh mention of Sybil's Acrostiche, that is to say, of certaine verses of hirs whose first letters made the name of that king. 1605 Camden *Rem.* (1637) 320 Our Poets have their Inventions as young Scholars call them, as Echoes, Achrostickes, Serpentine verses. 1642 Mortagne *Acts & Mon.* 100 The whole Poeme, or Passage of that *Acrostiche*, is a Description of the generale Judgement. 1648 Cowley *Of Wit* vi. W [illegible] 1668, 2 In which who finds out Wit, the same may see An'grams and Acrostiques, Poetry. 1711 Addison *Spect.* No. 60 ¶4 Besides these there are compound Acrosti where the principal Letters stand two or three deep. 1776 Campbell *Lexiphanes* (1774) 98 Rhyme is fit for nothing madrigals, epigrams and acrostics. 1842 Spalding *Italy* 15 Publius Optatianus Porphyrius composed, in poem, still extant, in praise of Constantine, the line which are acrostics. 1845 Lockhart *Hist. A.-S. Ch.* ii. (18 II. 145 Acrostics were also admired, both single and dou

2. A Hebrew poem in which the consecuti lines or verses begin with the successive lett of the alphabet; an abecedarian poem.

1753 Chambers *Cycl. Supp.* s.v., Some pretend to f Acrostics in the psalms, particularly in those cal Abecedarian psalms. 1888 Chambers *Encycl.* I. 33 It customary at one time to compose verses on sacred subj after the fashion of these Hebrew acrostics, the success verses or lines beginning with the letters of the alphabe their order.

†**3.** The beginning or end of a verse. *Obs.*

1614 Selden *Titles of Honor* (1614) 12 That Acros ..*Kyrios kai doxa*. 1753 Chambers *Cycl. Supp.* s.v., T an *Acrostic* properly signifies the beginning of a verse, y is sometimes also used for the end or close of it; as by author of the constitutions, when he orders one to sing hymns of David, and the people to sing after him *Acrostic* or ends of the verses..This was called sing *Acrostics*, *Acrostichia*, which is a species of psalmody u in the ancient church.

B. *adj.* Pertaining to or characterized acrostics (in senses A. 1, 2).

1682 Dryden *Macflecknoe* 206 Leave writing plays, choose for thy command, Some peaceful province Acrostic land. 1669 Gale *Crt. of Gentiles* I. i. xii. 78 That Phenician order [of Letters]..was most ancient, appe by the Acrostic verses of David. 1888 Chambers *Encycl* 33 The Acrostic poetry of the Hebrews.

acrostic (əˈkrɒstɪk), *a.*² [A factitious formati from across, or acrossed (= *acrost*).] Cross folded across; moving crosswise, erratic, z zag.

1600 Middleton *Fam. of Love* iv. iv. Wks. II. 179 W melancholy air, with acrostic arms, now crossed? 1791 Taylor in *Monthly Rev.* XXIII. 366 The capricious of an acrostic itinerary.

acrostical (əˈkrɒstɪkəl), *a.* *rare*. Also acrostic [f. acrostic *a.*¹ + -al¹.] Of the nature consisting of, or in the form of an acrostic.

1843 J. Holland *Psalmists Brit.* I. 104 The whole Bib abridged in a sort of scheme of acrostical mnemonics. Lawson in *W. Smith's Dict. Chr. Biog.* IV. 648/1 Eighth Book, in acrostichal verse. 1894 *Athenæum* 28 J 124/3 Chaucer's 'A B C', a curious acrostical prayer Psalm cxviii'.

acrostically (əˈkrɒstɪkəlɪ), *adv.* [f. prec. -ly².] After the manner of an acrostic.

1865 E. B. Tylor *Early Hist. Man.* v. 103 Letters ma named..acrostically, by names chosen because they b with the right letters.

acrostichal (əˈkrɒstɪkəl), *a.* (*sb.*) *Ent.* [a. *acrostichal* (J. Mik *Dipterolog. Untersuchung* 1878).] 'Situated in the highest rank or r —used of certain bristles on the mesonotum muscoid flies' (Webster). Also *ellipt.* as *sb.*

1884 C. R. Osten-Sacken in *Proc. Ent. Soc. Washin* 309 The intermediate pair of rows is represented by sometimes one..row of peculiar, minute bristles, w Prof. Mik calls the *acrostichal bristles*. 1909 Imms *Te Ent.* iii. 601 Thoracic Bristles..*Acrostichal*: a row o each side of median line. 1934 Webster *Acrostichal* a acrostichal bristle. 1961 J. E. Collin *Empididae* i. 59 short biserial acrostichal bristles... There may, howe often be a distinct postsutural bristle, and all excep acrostichals may be longer and stronger.

acrostichic (ækrəʊˈstɪkɪk), *a.* [f. Gr. ἀκροστιχ acrostic + -ic.] Of or pertaining to acrost

1880 R. N. Cust *Ling. Ess.* 352 In assigning these na the Acrostichic principle was followed inversely.

acrostichoid (əˈkrɒstɪkɔɪd), *a.* *Bot.* acrostich(um + -oid.] Resembling commencement of lines of poetry; an epithe the genus of ferns *Acrostichum*, N *Polypodiaceæ*, so called from the pecu distribution of the sori on the back of the fron

1882 T. Moore in *Gardeners' Chron.* No. 438 XVII. The dimorphous base, with light brown spore-cases, for the usual universal acrostichoid fructification.

acrosticism (əˈkrɒstɪsɪz(ə)m). [f. acrostic -ism, more correctly *acrostichism*.] The meth of acrostics; acrostichal arrangement character.

1842 Mrs. Browning *Grk. Chr. Poets* 73 There acrosticism in the poem, acrostic as it is,—a beauty's side,—which is above the acrosticism.

acrotch, variant of accroach *v.* *Obs.* to gri

acroteleutic (ˌækrəʊtɪˈljuːtɪk). [f. ἀκροτελεύτιον the fag-end, hence the burden chorus (f. ἄκρος extreme + τελευτή end) + 'Among Ecclesiastical writers, the end of a v

Annex 20

VAN DALE GROOT WOORDENBOEK DER NEDERLANDSE TAAL, 11TH ED., UTRECHT/ANTWERPEN, 1984, PP. 2050-2051

van Dale

GROOT WOORDENBOEK DER NEDERLANDSE TAAL

Elfde, herziene druk
door prof. dr. G. Geerts en dr. H. Heestermans
met medewerking van dr. C. Kruyskamp

Tweede deel J - R

Van Dale Lexicografie Utrecht / Antwerpen

da;–2. *feestelijke* ontvangst of (m.n.) algemene toejuiching van iem. die zich onderscheiden heeft: *iem. een ovatie brengen; de toejuichingen groeiden aan tot een ovatie.* **ovationeel'**, bn., het karakter dragend van een ovatie: *een ovationeel applaus.*

o'ven, m. (-s), 1. besloten ruimte, die (door vuur of andersins heet gemaakt) geschikt is om er voorwerpen in te smelten, te bakken, te drogen enz. (in de techniek in talloze soorten en typen onderscheiden): *een oven voor het drogen van vruchten; kunstdiamant wordt gemaakt in een elektrische oven;–Hollandse oven*, open steenoven;–m.n. besloten ruimte die dient om brood te bakken: *brood in de oven schieten; het komt zo uit de oven*, het is kersvers;–(zegsw.) *dat gaapt (zo wijd) als een oven*, dat is heel onwaarschijnlijk, (gew.) dat is zonneklaar, dat spreekt vanzelf;–*tegen een oven gapen*, eig. wijd willen gapen als een oven, vand. voor: vergeefse moeite doen, (ook) spreken zonder aangehoord te worden;–(gew.) *hij heeft een mond gelijk een oven*, een zeer grote mond;–2. hoeveelheid die tegelijk in een oven gebakken wordt: *hij had zijn twee oventjes gebakken* (Streuvels);–3. gedeelte van een keukenfornuis waarin het vlees te braden wordt gezet, gebak bereid kan worden, enz.;–4. (fig.) ruimte waarin het zeer heet is: *'s zomers is zo'n loods een oven;*–5. (zeew.) het spoor van de boegspriet, gevormd door twee stijlen in de kuil, waardoor een gat gaat voor de hieling van de boegspriet;–6. (met hoofdl.) naam van een sterrenbeeld aan het noordelijk halfrond (*Fornax*). **o'ventje**, o. (-s), kleine oven.

o'venas, v. (m.); **...bakkertje**, o. (-s), een ben. voor de fitis; **...baksel**, o., het bakken in, baksel in een oven; (zegsw., gew.) *het zal maar een ovenbaksel duren*, er zal niet lang over gesproken worden; **...bank**, v. (m.) (-en), (v.d. glasblazers) het muurwerk dat om de glasoven loopt; **...beest**, o. (-en), (gew.) kakkerlak; **...bekleding**, v. (-en); **...bouw**, m.; **...bouwer**, m. (-s); **...brand**, m., het vuur in de oven; (fig.) geweldige hitte; **...buur**, m. en o., (gew.) een van het woonhuis afgezonderd huisje dat aan het bakhuis grenst of er een geheel mee vormt; **...constructie** (**...konstruktie**), v. (-s); **...controleur**, m. (-s), persoon belast met de bewaking van het proces in een moderne smeltoven; **...dekkertje**, o. (-s), (gew.) fluiter; **...deur**, v. (m.) (-en); **...dweil**, m. (-en), bos oude lappen aan een stok, waarmee een oven gereinigd wordt.

o'venen, (ovende, h. geovend), in de oven schieten.

o'vengaffel, v. (m.) (-s), ijzeren stang bij het stoken van ovens in gebruik, om daarmee de brandstof, m.n. het hout te rangschikken; **...galmei**, o., zinkkalk die bij het smelten van zink sublimeert en aan de ovenwanden hangt; **...gang**, m. (-en); **...gas**, o. (-sen); **...gat**, o. (-en), opening van een oven; ovenmond; **...gerief**, o., benodigdheden voor een bakoven; **...gloed**, m.; **...handschoen**, m. en v. (-en), hetz. als *-want*; zie ald.; **...hitte**, v.; **...hout**, o., hout dat in de oven gestookt wordt; **...huis**, o. (...huizen), bakhuis.

ovenist', m. (-en), werkman in een brood- of aardewerkfabriek of een gieterij belast met het toezicht op de oven.

o'venjongen, m. (-s), (glasbl.) jongen die de vervaardigde voorwerpen uit de koeloven moet aangeven; **...klok**, v. (m.) (-ken), klok die men kan instellen op een bep. tijd, zodat de oven op die tijd gaat branden; **...koek**, m. (-en), ronde platte koek die te zamen met het brood in een oven gebakken wordt; **...konstruktie**, zie *-constructie;* **...krabber**, m. (-s), rakelijzer; vuurhaak; **...lading**, v., hoeveelheid materiaal waarmee een smeltoven gevuld wordt; **...lamp**, v. (m.) (-en), lamp in een oven; **...metselaar**, m. (-s), ambachtsman die ovens metselt en repareert; **...mond**, m. (-en), opening van een oven waar het brood, de brandstof enz. wordt ingebracht;–bij steenovens, openingen waar de groene stenen worden ingereden; **...muur**, m. (...muren), wand, gewoonlijk in baksteen gemetseld, die de binnenruimte van een oven afsluit; **...paal**, m. (...palen), platte houten schop met lange steel waarmee het brood in de oven geschoten en er uit gehaald wordt; **...plaat**, v. (m.) (...platen), ijzeren plaat waarop het deeg gelegd wordt dat in de oven moet bakken; **...ruimte**, v.; **...schacht**, v. (m.) (-en), bij verticale ovens (b.v. hoogovens), het lange gedeelte boven de stookopeningen; **...schop**, v. (m.) (-pen); **...sle(d)e**, v. (m.) (...sleeën, ...sleden), braadslee; **...steen**, m. (...stenen), benaming voor een grote soort van baksteen waarmee het gewelf van bakkersovens gemetseld wordt; **...stok**, m. (-ken), ovengaffel; **...tegel**, m. (-s), vuurvaste tegel voor het bevloeren van (bak)ovens; **...temperatuur**, v.; **...type**, o. (-n, -s); **...venster**, o. (-s), raampje in de oven van een (gas)fornuis; **...vers**, bn., (vooral reclametaal) zo uit de oven; **...vloer**, m.; **...vogel**, m. (-s), familie van vogels (*Furnariidae*) in Zuid- en Midden-Amerika, die hun eieren leggen in leemnesten, met naast elkaar gelegen voorhof en broedruimte; **...vogeltje**, o. (-s), aan het zilvervisje verwant insekt (*Thermobia domestica*), een warmteliewend dier dat vooral in de nabijheid van broodovens voorkomt; **...vondst**, v. (-en), archeologische vondst ter plaatse waar een oven geweest is; **...vuur**, o. (...vuren), vuur waardoor een oven verhit wordt; **...wachter**, m. (-s), hij die het toezicht heeft op een of meer ovens, b.v. bij de fabricage van bruinkoolbriketten; **...wand**, m. (-en); **...want**, v. (m.) (-en), want voor huishoudelijk gebruik om hete schalen enz. mee aan te vatten; **...warmte**, v.; **...wis**, v. (m.) (-sen), ovendweil.

o'ver, I. vz., 1. boven, op enige afstand in bovenwaartse richting: *over het vuur hangen; iem over het hoofd hangen*, ook fig. met betr. tot een zaak waardoor iem. wordt bedreigd;–*haar handen zweefden over de toetsen van de piano;*–*over schouder*, van een geweer: op schouder;–

2. bij bewegingen op of langs de oppervlakte van iets: *er de zweep over halen* (t.w. over het trekdier);–*men kon er over de hoofden lopen*, de mensen stonden zeer dicht opeengepakt;–*een koude rilling liep over zijn rug; het zweet liep over zijn gezicht; het geld rolt over de vloer; over de grond kruipen;*–*over de straat lopen;*–*met iem. over weg zijn*, samen een zelfde weg gaan;–(fig.) *over de trap gaan*, in het trappenhuis beroddeld worden;–*met iem. over weg kunnen*, zie *Overweg* (II);–*hij komt er veel over huis, over de vloer*, hij komt er dikwijls;–

3. ter aanduiding dat iets een oppervlakte geheel of gedeeltelijk bedekt: *een kleed over de tafel spreiden; een tapijt over de vloer leggen; een doek over het hoofd hebben; over de oren binden; een papier over iets plakken; de hand over iets houden; het water stroomt over het land;*–*er viel een wondere weemoed over hem;*–*hij heeft iets innemends over zich*, in zijn uiterlijk, in zijn doen en laten;–4. op alle (op de meeste) punten van zekere uitgestrektheid, zonder dat het denkbeeld van bedekken van boven af op de voorgrond treedt: *hij is nat over zijn gehele lichaam; mest over het land brengen; de tijding verspreidde zich over het gehele land;*–*over het algemeen*, in het algemeen genomen;–

5. ter aanduiding van een zich-bevinden, een houding op zekere afstand boven iets (gebogen enz.): *zij boog zich over het bedje van het kind;*–oneig. ter aanduiding van een bemoeienis: *Dr. Van Zevenaar heeft altijd over hem gepraktizeerd* (Van Lennep);–(zegsw.) *ik zou hem niet over mijn kat vertrouwen*, van een onbekwaam geneesheer gezegd;–vandaar: met iets bezig zijnde: *ik zat twee dagen over dit artikel;*– 6. ter aanduiding van een betrekking van meerdere tot mindere, van machthebbende enz.: *over deze zaak heb ik niets te zeggen; geen mens zal verder baas over ons spelen;*–*heersen, gebieden over;*–*beschikken over;*–

7. in de richting van: *over hoek*, hoekwaarts, hoeks;–(zeew.) *over stuurboord (of bakboord) vallen*, gezegd van een schip dat, recht in de wind liggende, door de wind met zijn voorsteven naar rechts (of links) wordt gedrongen: *over steven schieten*, gezegd van een schip dat begint vooruit te gaan;–

8. om uit te drukken dat men iets passeert, het overgaat of overvaart: *hij zag hem over de brug gaan;*–via: *hij reed over Naarden en Amersfoort naar Arnhem;*–*over de post*, per post; *het veer waar hij over moest; over de brug komen* (zie Brug);–*een plank over de sloot leggen; een brug over de rivier slaan;* –in toepassing op de lijn of richting waarlangs iets gemeten wordt: *over kruis gemeten*, langs de langste lijnen die op iets getrokken kunnen worden; *over de borst gemeten is het hemd 40 cm breed;*–(bilj.) *over rood (wit) spelen*, eerst de rode (witte) bal raken;–

9. ter aanduiding van een zich-uitstrekken over een bep. tijd: *die registers lopen over meer dan twee eeuwen;*–(vand.) gedurende, tijdens: *over dag* (thans aaneen);–

10. met betrekking tot, aangaande, ten opzichte van, met het oog op enz.: *zijn gedachten over iets laten gaan; het woord voeren over iets; oordelen, nadenken over; een boek, een mening, een rapport over*;– 11. ten gevolge van, naar aanleiding van; wegens: *ongerust, voldaan, tevreden over*;–*over iets inzitten*, in angst zijn op grond van iets dat gebeurd is;–*angst, berouw, verdriet over iets*;–

12. om uit te drukken dat een handeling enz. geschiedt boven of langs iets heen, met het bijdenkbeeld van het komen aan de andere kant: *een bal over de schutting werpen; een voet over de dorpel zetten*;–(zegsw.) *over de kling jagen*, doden door het zwaard;–*iem. over het paard tillen*, te veel prijzen; –*vallen over iets of iem.*, door er tegen te stoten, struikelen en erop of eroverheen vallen (zie ook *Vallen*);–*iets niet over zijn hart kunnen krijgen*, er niet toe kunnen besluiten (omdat men medelijden heeft, deernis gevoelt);–(gew.) *daar kan ik niet van over*, dat kan ik maar niet begrijpen, daar sta ik verbaasd van;–*'t is niet om over te komen*, dat is uiterst moeilijk om te boven te komen;–*hals over kop*;–

13. aan de andere zijde van: *hij is over de grenzen; hij woont over de rivier*;–14. tegenover: *hij woont over het stadhuis; vlak, schuin over mijn deur; over de spiegel zitten*;–

15. (gew.) met betr. tot een tijdsruimte die voorbij is, voor: *over drie jaar was hij nog kloek en gezond; zo'n tochtje heb ik over enige tijd gedaan*;–

16. na verloop van: *over een dag of tien; over een paar dagen kom ik weer hier*;–

17. om het overschrijden van een grens of wat als zodanig beschouwd wordt uit te drukken: *de thermometer staat over de negentig*;–(zegsw.) *iem. over het hoofd groeien*;–*erover uit zijn*, opgetogen zijn over het bedoelde;–(gew.) *dat gaat over zijn hout!* dat gaat te ver!–18. om te kennen te geven dat een bep. tijdgrens of zeker tijdstip overschreden wordt: *hij kwam lang over tijd thuis; het is over vieren*;–*ik woon hier al over het jaar; een man van over de zeventig jaar*;–*hij blijft een nachtje over*, hij blijft logeren tot morgen;–19. om aan te duiden dat er sprake is van meer dan de getalswaarde, grootte, afstand enz. die wordt genoemd: *er moet over de honderd frank in zijn*;–

II. bw., 1. zo dat iets zich boven iets anders bevindt: *de klimop buigt een hellend afdak over*;–2. ter aanduiding van een beweging langs de oppervlakte van of op enige afstand boven iets: *zij wandelden nog eens het kerkhof over* (Van Koetsveld);–3. van de ene plaats naar de andere, hetzij langs of boven over iets heen: *zij liep de kamer uit, de gang over*;–*over en weer*, a) (gew.) van het ene punt naar het andere en terug; b) (gew.) heen en weer, zonder dat aan een bep. begin- en eindpunt wordt gedacht: *de dokter wandelde angstig over en weer*; c) van weerskanten: *ze vonden elkaar over en weer lief*;–4. aan de andere zijde of op een andere plaats: *nog voor hij het zag, was zij reeds de straat over*;–*over!* 1°. roep om de aandacht van een veerman te trekken, om te kennen te geven dat men wil overvaren; 2°. (radiotelefonie) sluitwoord waarmee de spreker te kennen geeft dat hij antwoord van de andere zijde verwacht;–(van personen die verhuizen) met de inboedel in de nieuwe woning aangekomen: *nog een dag of twee en we zijn helemaal over*;–(van scholieren) tot een hogere klasse bevorderd: *mijn broer is over*;–op bezoek gekomen: *mijn broer is gisteren over geweest*;–

5. zich bevindende aan de andere zijde, aan de overzijde: *schuins over woont de burgemeester*;–6. voorbij, geëindigd: *het onweer is over; zijn drift is over; over was de pret; de pijn is al over*;–*het is over met de pret*, het is gedaan met;–7. boven de maat of voorbij een bep. grens, in 't bijz. m. betr. t. een grens die door de behoefte wordt gesteld: *er is geen volk over ten onzent, en in het volk dat er over is, zit pit noch geest* (Kuyper); *stof, reden te over*;–8. nog aanwezig zijnde boven het verdwenen deel, overschietende; *de tijd die hij over had*.

Met ww. vormt *over* talloze scheidbare en onscheidbare samenst., waarvan hierna alleen de voornaamste zijn opgenomen;– in verb. met bn., duidt *over-* aan dat de eigenschap in de hoogste of in een te hoge mate aanwezig is;–in (oudere) scheik. ben. duidt *over-* de hoogste oxydatietrap van een element in een reeks zuurstofzuren ervan aan, b.v. *overmangaanzuur*, nu permangaanzuur (enz.);–verb. met een zn. in de zin van „te groot", als in overdosis, zijn anglicismen.

o'veraangenaam, bn. bw., hoogst aangenaam.

o'veraardig, bn. bw., zeer aardig, alleraardigst.

o'veraccentuering, v., het leggen van een te zware nadruk op, m.n. fig.: *overaccentuering van sport en spel*.

o'veractief, bn., al te actief.

o'veracting, (Eng.) m., g.mv., het té nadrukkelijk acteren, met té zeer aangezette gebaren, té luide stem e.d.

overa'demen, (overademde, heeft overademd), (overg.) zijn adem laten gaan over (iets), beademen.

o'verafkoeling, v., (nat.) afkoeling van een vloeistof tot beneden het vriespunt zonder dat zij vast wordt: *water heeft men door overafkoeling tot –12° kunnen brengen*.

I. overal, I. bw. [het accent wisselt], 1. op alle plaatsen: *o'veral zoeken; het is overal koud; overal heen gaan; overal gangbaar; men vindt dit op vele plaatsen, maar toch lang niet overal'; overal', overal', waar de meisjes zijn daar is het bal* (Nederl. liedje);–2. alles (in verb. met een voorz.): *hij is overal lid van*;–

II. tw. (*overal'*), (zeew.) reveille elke morgen: *overal maken*;–*overal houden*, des nachts al het scheepsvolk wakende houden;–ook als sein bij het neerlaten van het anker enz. om te kennen te geven dat alleman zich gereed moet houden om een bevel uit te voeren: *klaar overal!*–

III. zn. m. (?), hetz. als *klauwengang* (zie ald.).

II. overal', m. (-s), 1. (in Belg., vertaling van Fr. *surtout*), jas, kiel die men over zijn andere kleren aantrekt;–2. (N.-Ned., volkst.) overall.

overall' (Eng.), m. (-s), werkpak aan één stuk dat men over de gewone kleding en ter bescherming daarvan bij het werken aantrekt.

o'veralpisch, bn., (w.g.) transalpijns, aan gene zijde van de Alpen gelegen.

overaltegenwoor'dig, bn., alomtegenwoordig; **–heid**, v.

o'verander, bn., (gew.) om de een of ander; telkens een eenheid overspringende: *overandere week, overander jaar*, **o'verander(en)daags'**, **...daags**, bn., (gew.) anderdaags: *overanderdaagse koorts*.

o'veraperio'disch, bn., te sterk aperiodisch.

I. o'verbabbelen, (babbelde over, heeft overgebabbeld), (overg.) vertellen wat niet verteld mag worden; klikken, kwaadspreken: *zij babbelen dit over*.

II. overbab'belen, (overbabbelde, heeft overbabbeld), (overg.) 1. door gebabbel tot zwijgen brengen; –2. (gew.) overhalen: *hij heeft mij overbabbeld*.

o'verbagage, v., meerdere dan toegelaten bagage.

I. o'verbakken, (bakte over, heeft overgebakken), (overg.) 1. opnieuw bakken, voor de tweede maal bakken;–2. meer bakken dan nodig is.

II. o'verbakken, (heeft overgebakt), (overg.) (fotogr.) een materiaal van de ene bak in een andere overbrengen; ook voor een bep. ontwikkelmethode, waarbij van wisselende baden gebruik gemaakt wordt.

o'verbank, v. (m.) (-en), bank tegenover die waarop men zit; **...bank'vuur**, o., (krijgsw.) vuur dat gegeven wordt over een borstwering (tgov. vuur door schietgaten).

o'verbede'len, (bedelde over, heeft overbedeld) te veel bedelen.

o'verbedijking, v. (-en), bedrag dat men overgedijkt (2.) heeft.

o'verbeen, o. (-deren), (geneesk.) beenachtige uitwas;–(veearts.) schevelbeen, schuifelbeen.

o'verbeet, m. (...beten), omgekeerde frontbeet, stand van de tanden waarbij de ondertanden verder naar buiten uitsteken dan de boventanden.

o'verbejaging, v., het te sterk jacht maken op een diersoort, waardoor haar bestaan bedreigd wordt.

o'verbekend, bn. bw., meer dan bekend, bij iedereen bekend (soms ong.); **–heid**, v.

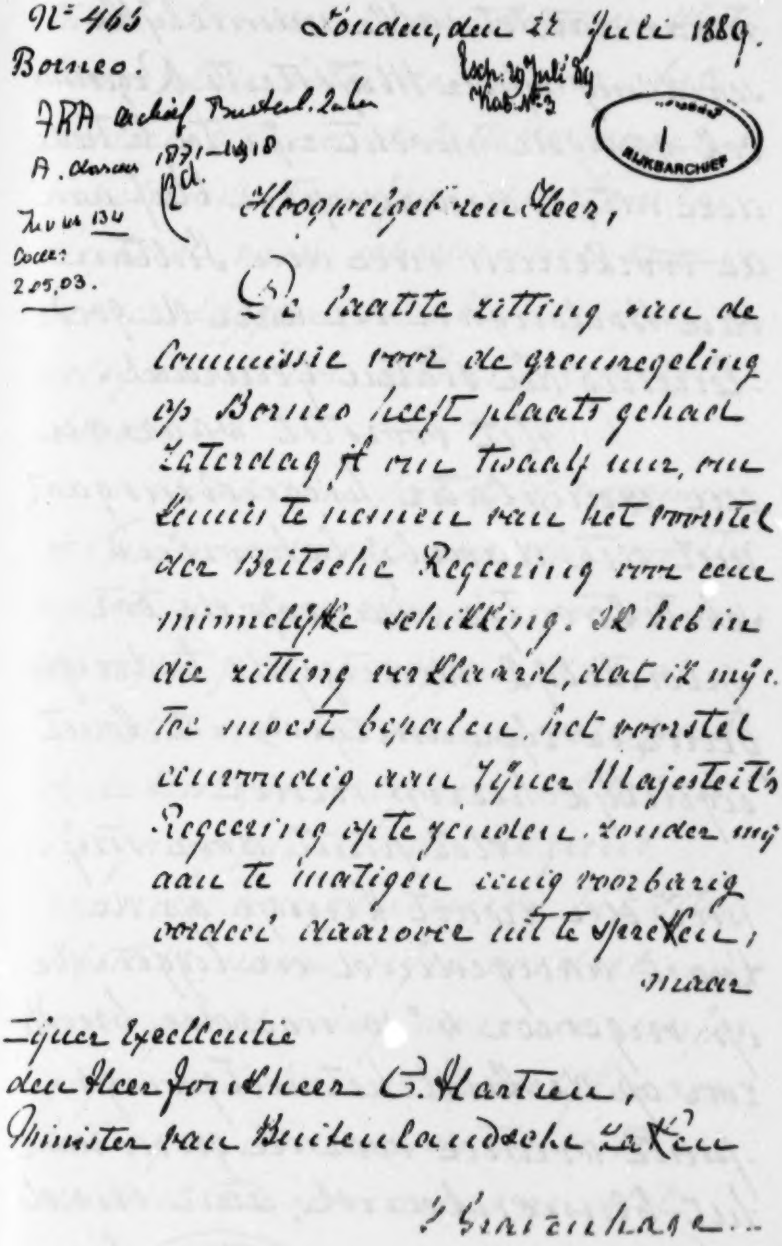
overbela'den, bn., te zwaar beladen.

overbelast', bn., te zwaar, te zeer belast. **o'verbelastbaarheid**, v., vermogen (v.e. motor) waarmee de normale belasting overtroffen wordt.

o'verbelasten, (heeft overbelast), te zwaar belasten m.n. (techn.) meer belasten dan de normale spanning, breukvastheid, het prestatievermogen enz. toelaat. **overbelas-**

Annex 21

LETTER FROM COUNT DE BYLANDT TO MR. HARTSEN, 28 JULY 1889 (DUTCH ORIGINAL AND ENGLISH TRANSLATION)



N° 463
Borneo.
ARA archief Buitenl. Zaken
A. dossiers 1871–1918
Rd.
Inv nr 134
Doss:
205,03.

Londen, den 22 Juli 1889.

Exp: 29 Juli 89
Kab. N° 3

RIJKSARCHIEF
1

Hoogwelgeboren Heer,

De laatste zitting van de Commissie voor de grensregeling op Borneo heeft plaats gehad Zaterdag jl. om twaalf uur, om kennis te nemen van het voorstel der Britsche Regeering voor eene minnelijke schikking. Ik heb in die zitting verklaard, dat ik mij er toe moest bepalen, het voorstel eenvoudig aan Zijner Majesteits Regeering op te zenden, zonder mij aan te matigen eenig voorbarig oordeel daarover uit te spreken, maar

Zijner Excellentie
den Heer Jonkheer C. Hartsen,
Minister van Buitenlandsche Zaken
's Gravenhage..

maar dat, tot welke minnelijke schikking Zijner Majesteits Regeering ook genegen mocht zijn toe te treden, deze altijd onderworpen bleef aan de voorkennis van den Sultan van Boelongan en aan de goedkeuring der Staten-Generaal.

Het voorstel waarvan een exemplaar hiernevens gaat, met een daarbij behoorend schetskaartje, waarop de oorspronkelijk wederzijds bedongen grenzen zijn aangeduid, komt eigenlijk hierop neder:

Het punt door mij met een zwart kruisje op de kaart aangeduid en liggende op ongeveer 4° 10' noorder breedte zou op de kust het uitgangspunt worden voor de grens naar het binnenland, aan ons de twee

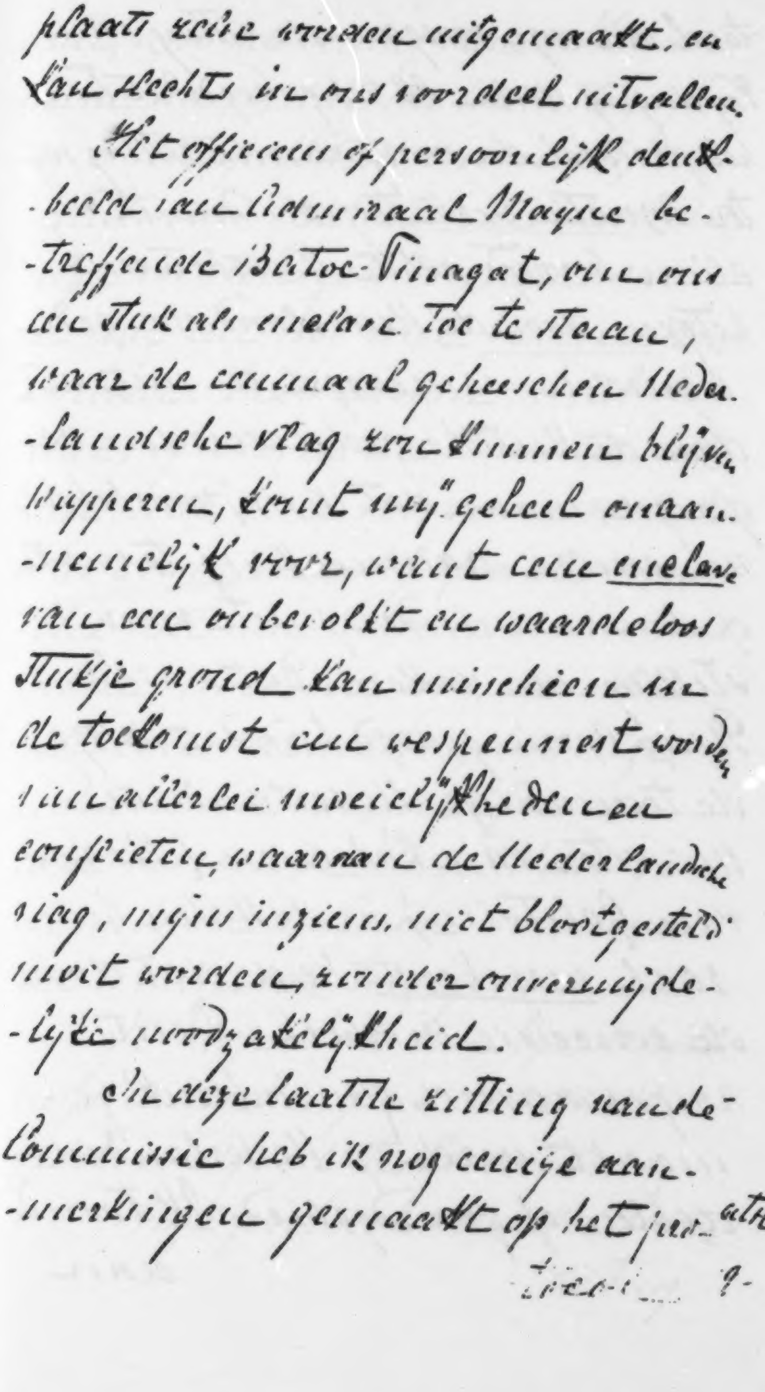
twee eilanden van Oost en West Nanoekan latende maar het grootere eiland Sebittikk aan Engeland toewijzende. Voorts, vrijheid van scheepvaart, voor beide vlaggen, in alle rivieren gelegen in het betwiste grondgebied.

Bijaldien het mij vergund is mijn oordeel over dat voorstel uit te spreken, dan moet ik in de eerste plaats zeggen, dat al mocht ook het aangegeven punt op de kust, op ongeveer 4° 10' als uitgangspunt van de grens worden aangenomen, het eiland Sebittikk, naar mijn oordeel, in geen geval mag worden prijs gegeven. Veel verkieselijker zou het zijn, indien dat punt op de kust ten noorden van dit

eiland

ALGEMEEN RIJKSARCHIEF

eiland, kon worden vastgesteld, daar waar ik een zwart streepje op de kaart heb gemaakt en liggende op ongeveer 4° 17'. De vrije vaart op de rivieren in het betwiste grondgebied is reeds lange jaren geleden in de officieele briefwisseling toegegeven. En wat verder betreft de algemeene beginselen voor de grensregeling in het binnenland, zoo geloof ik, dat die zouden moeten bestaan in een lokaal onderzoek, toevertrouwd aan twee gedelegeerden, een Nederlandsche en een Britsch, om van de bevolking zelve te vernemen, tot welken inlandschen Vorst zij zich onderhoorig rekenen; want daar komt het vooral op aan, en dit kan niet in Europa, maar moet op de plaats



plaats zelve worden uitgemaakt, en kan slechts in ons voordeel uitvallen.

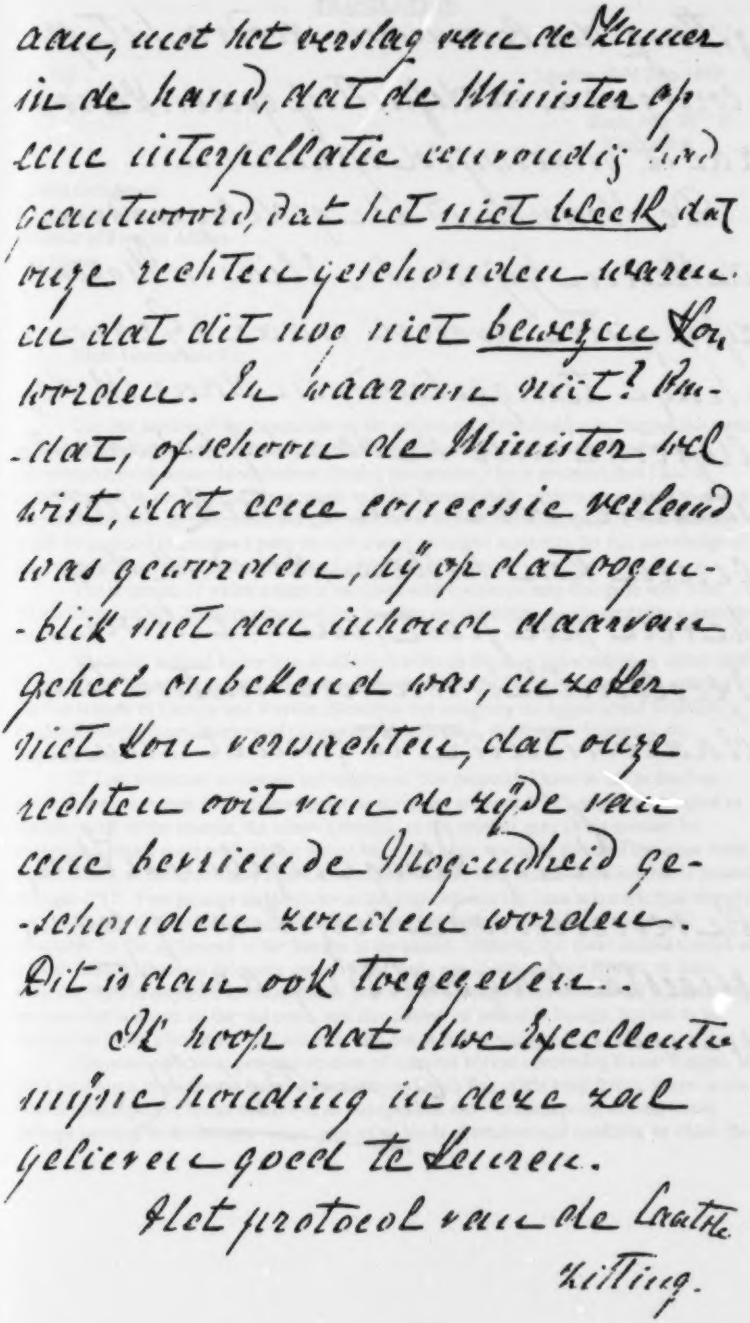
Het officieel of persoonlijk denkbeeld van Admiraal Mayne betreffende Batoe-Tinagat, om ons een stuk als enclave toe te staan, waar de eenmaal geheschen Nederlandsche vlag zou kunnen blijven wapperen, komt mij geheel onaannemelijk voor, want eene enclave van een onbevolkt en waardeloos stukje grond kan misschien in de toekomst een wespennest worden van allerlei moeielijkheden en conflicten, waaraan de Nederlandsche vlag, mijns inziens, niet blootgesteld moet worden, zonder onvermijdelijke noodzakelijkheid.

In deze laatste zitting van de Commissie heb ik nog eenige aanmerkingen gemaakt op het practische

-tische 9-

-tocol van onze voorgaande zitting van Vrijdag 14 dezer. Ik heb gezegd, dat toen het protocol der voorgaande zitting mij ter correctie werd toegezonden, ik mij alleen bevoegd achtte te verbeteren hetgeen door de Nederlandsche gedelegeerden was gezegd, en niet wat door de Britsche gedelegeerden was gezegd; maar dat ik mij voorbehield om eenige aanmerking te maken op hunne minder juiste voorstelling van zaken. Dat o.a. Sir Philip Currie gezegd had, dat in 1879, de toenmalige Nederlandsche Minister van Koloniën (Baron van Golstein) in de Staten Generaal *verzekerd* had, dat door de concessie Overbeck & Dent hoegenaamd geen inbreuk gemaakt werd op Nederlandsche rechten of grondgebied. Ik toonde

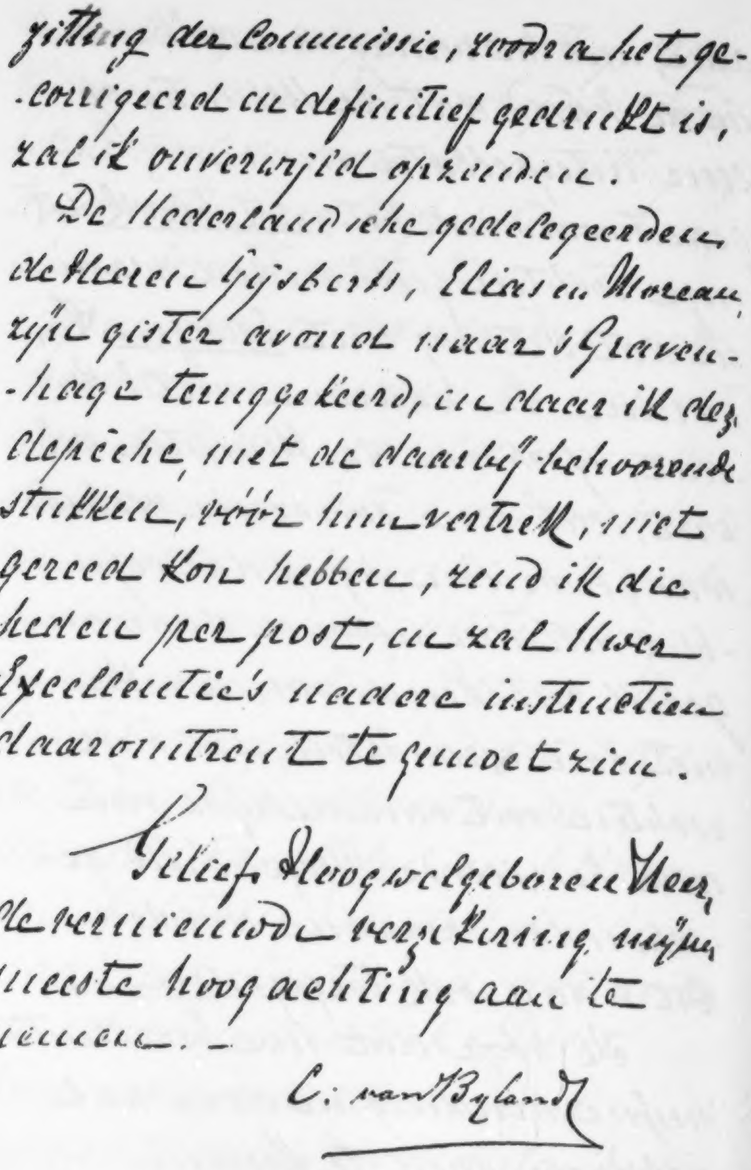
aan



aan, met het verslag van de Kamer in de hand, dat de Minister op eene interpellatie eenvoudig had geantwoord, dat het niet bleek dat onze rechten geschonden waren en dat dit nog niet bewezen kon worden. En waarom niet? Omdat, ofschoon de Minister wel wist, dat eene concessie verleend was geworden, hij op dat oogenblik met den inhoud daarvan geheel onbekend was, en zeker niet kon verwachten, dat onze rechten ooit van de zijde van eene bevriende Mogendheid geschonden zouden worden. Dit is dan ook toegegeven.

Ik hoop dat Uwe Excellentie mijne houding in deze zal gelieven goed te keuren.

Het protocol van de laatste zitting.



zitting der Commissie, zoodra het gecorrigeerd en definitief gedrukt is, zal ik onverwijld opzenden.

De Nederlandsche gedelegeerden de Heeren Gijsberts, Elias en Moreau zijn gister avond naar 's Gravenhage teruggekeerd, en daar ik deze depêche, met de daarbij behoorende stukken, vóór hun vertrek, niet gereed kon hebben, zend ik die heden per post, en zal Uwer Excellentie's nadere instructien daaromtrent te gemoet zien.

Gelief, Hoogwelgeboren Heer, de vernieuwde verzekering mijner meeste hoogachting aan te nemen. –

C: van Bylandt

TRANSLATION

No. 465 **London, July 28th 1889**
Borneo

Esch: July 29th '89
Kab: No. 3

To His Excellency
Jonkheer C. Hartsen,
Minister of Foreign Affairs
The Hague

Right Honourable Sir,

The last session of the committee on the settlement of the frontier on Borneo has taken place last Saturday at twelve o'clock, to take cognizance of the proposal by the British Government of an amicable settlement. During that session I have declared, that I had to restrict myself to simply send the proposal to H.M. Government, without presuming to give a premature opinion on the matter; but that, whichever amicable settlement H.M. Government might be inclined to become a party to, this always remained subject to the full knowledge of the Sultan of Boelongan and to the assent of the States General.

The proposal, of which a copy is enclosed with a skeleton map that goes with it on which the originally mutually stipulated for frontiers are indicated, strictly speaking comes to this:

The point marked by me by a small black cross on the map and situated on about 4°10' North latitude would be the starting-point on the coast for the frontier to the inland, leaving us the two islands of Eastern and Western Nanoekan but assigning the larger island Sebittikk to England. Furthermore, freedom of navigation, to both flags, in all rivers located in the disputed area.

If I am permitted to express my opinion on that proposal, I have to say in the first place, that even though the indicated point on the coast, at about 4°10', might be accepted as starting-point of the frontier, the island Sebittikk, in my opinion, may on no account be abandoned. Much more preferable it would be, if that point would be fixed on the coast north of this island, at the spot where I have made a black small dash on the chart and that is located at about 4°17'. Free passage on the rivers in the disputed area has been acknowledged already long years ago in the official correspondence. And furthermore concerning the general principles for the settlement of the frontier in the inland, I believe, that these should consist in a local inquiry, that two delegates are entrusted with; one Dutch and one British, to learn from the population itself, to which native prince they consider themselves to be subordinate; because that is above all the real point, and this cannot be settled in Europe, but has to be decided on at the place itself, and can only turn out to our advantage.

The semi-official or personal opinion of Admiral Mayne concerning Batoe-Tinagat, to grant us a piece as enclave, where the once run-up Dutch flag might keep flying, seems to me wholly unacceptable, for an enclave of an unpopulated and worthless piece of land could perhaps become in the future a wasps' nest of all kinds of troubles and conflicts, to which the

Dutch flag, in my opinion, should not be exposed, without inevitable necessity.

During this last session of the Committee I have yet made some remarks on the protocol of our last session of last Friday 19th. I have said that when the protocol of the preceeding session was sent to me for correction, I only thought myself qualified to rectify what was said by the Dutch delegates, and not what was said by the British delegates; but that I reserved the right to myself, now to criticize their not quite correct way of representing things. That among other things Sir Philip Currie had said, that in 1879, the then Dutch Minister of the Colonies (Baron van Golstein) had assured in the States General, that no encroachment whatever was made on Dutch rights of territory by the concession Overbeck & Dent. I demonstrated, with the report of the Chamber in hand, that the Minister simply had replied to a question, that it was not evident that our rights were violated and that this could not be proven yet. And why not? Because, though the Minister did know, that a concession had been granted, at that time he did not at all know the contents thereof, and certainly could not expect, that our rights ever would be violated by a friendly nation. This then has been acknowledged.

I hope that it will please Your Excellency to approve of my conduct in this matter.

The protocol of the preceeding session of the Committee, as soon as it is corrected and finally printed, I shall send on without delay.

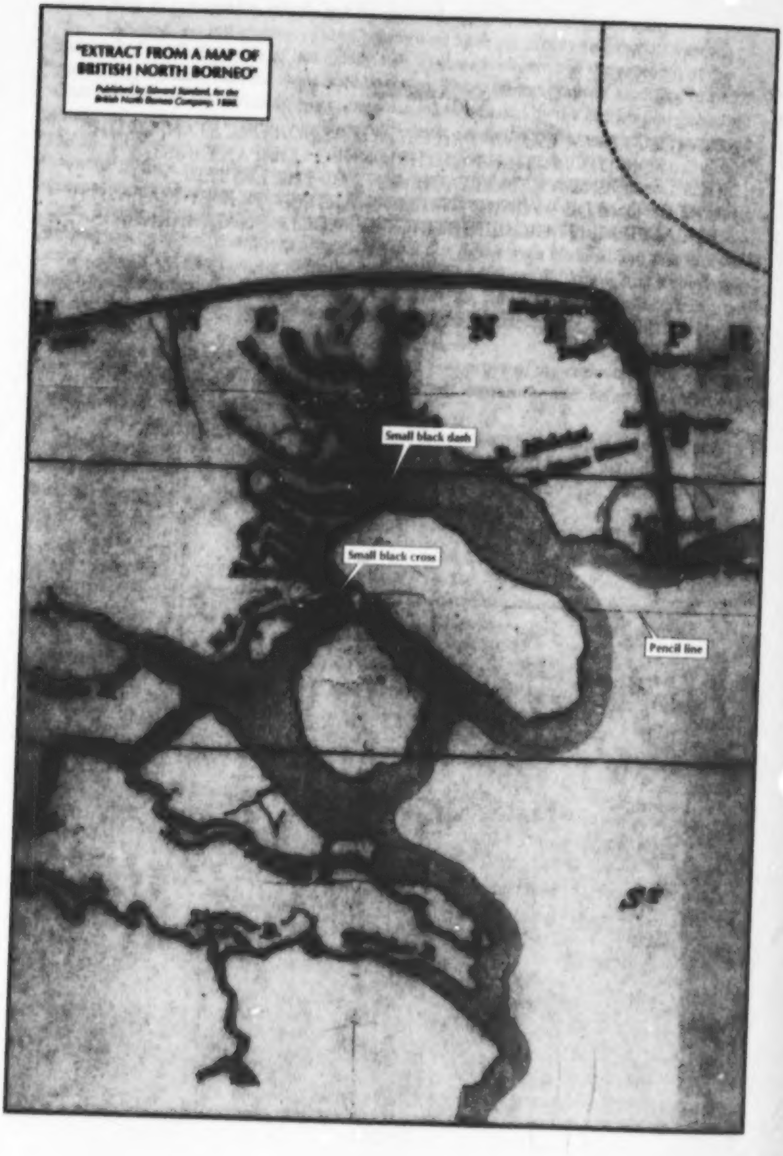
The Dutch delegates, Gijsberts, Elias and Moreau have returned to The Hague yesterday evening, and as I was not able to finish this dispatch, together with the accompanying papers, before they left, I am sending them to-day by mail, and shall await further instructions by Your Excellency concerning this matter.

Please Right Honourable Sir accept my renewed assurances
of the highest esteem.

C. van Bylandt

Annex 22

EXTRACT FROM A MAP OF BRITISH NORTH BORNEO, STANFORD, E., FOR THE BRITISH NORTH BORNEO COMPANY, 1888, SENT AS AN ATTACHMENT TO THE LETTER FROM COUNT DE BYLANDT TO MR. HARTSEN, 28 JULY 1889, WITH ENLARGEMENT HIGHLIGHTING THE ADDITIONAL MARKINGS



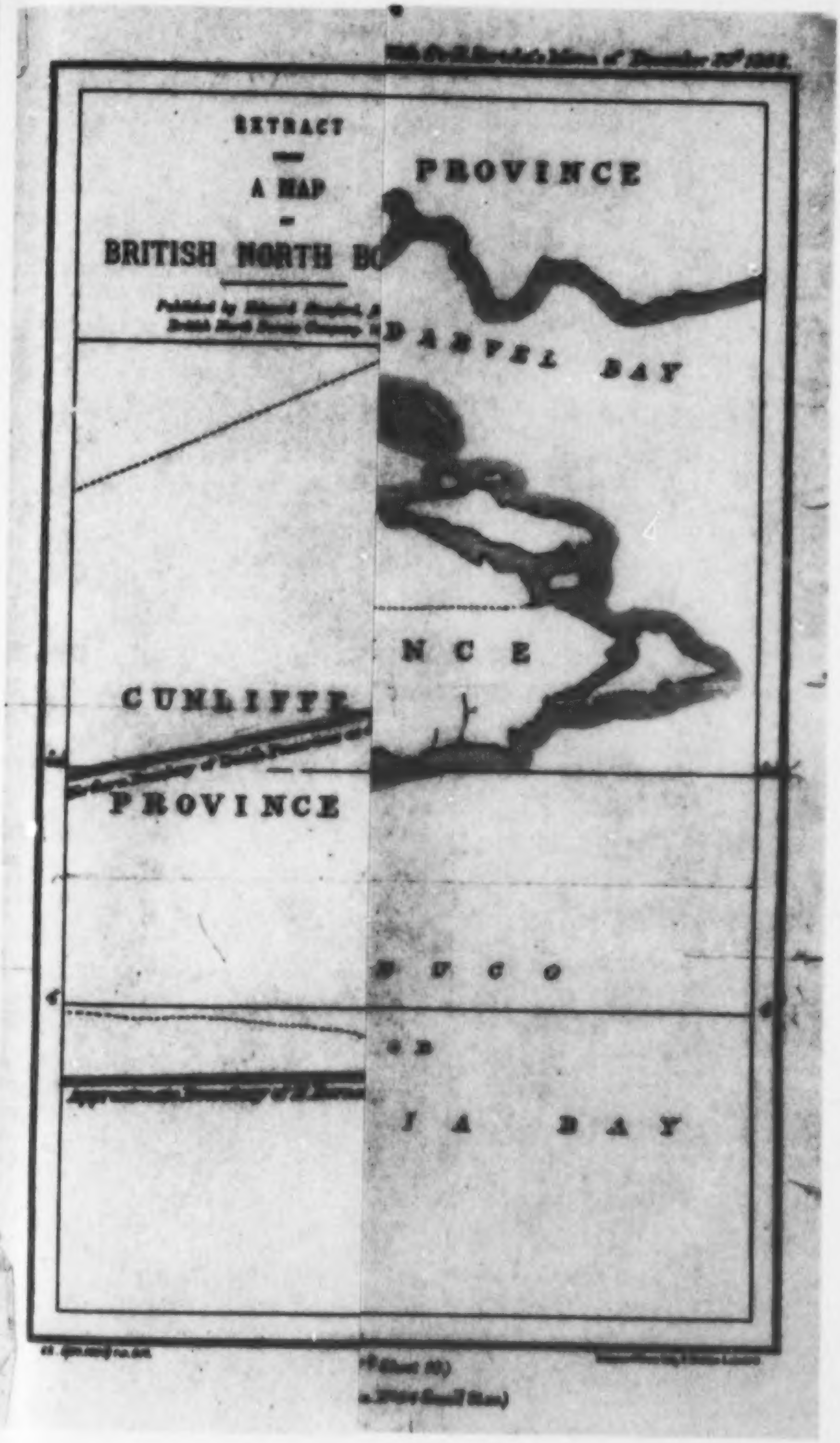
"EXTRACT FROM A MAP OF BRITISH NORTH BORNEO"

Published by Edward Stanford, for the British North Borneo Company, 1888

Small black dash

Small black cross

Pencil line


EXTRACT
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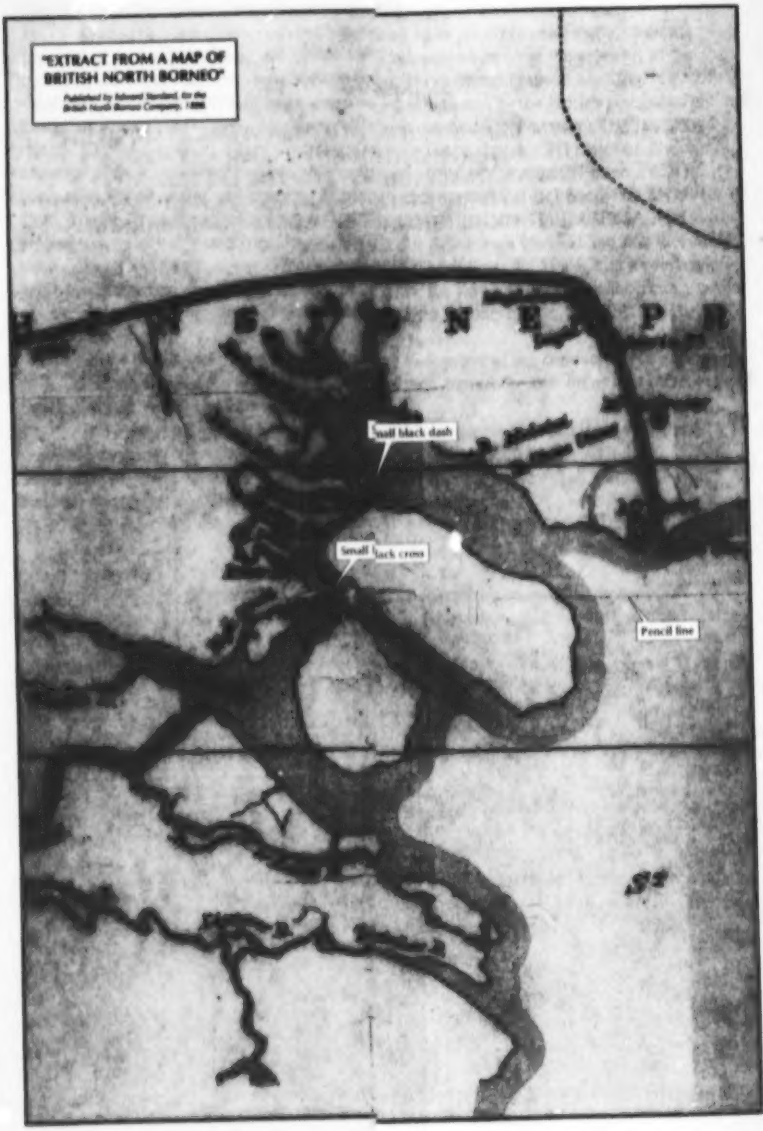
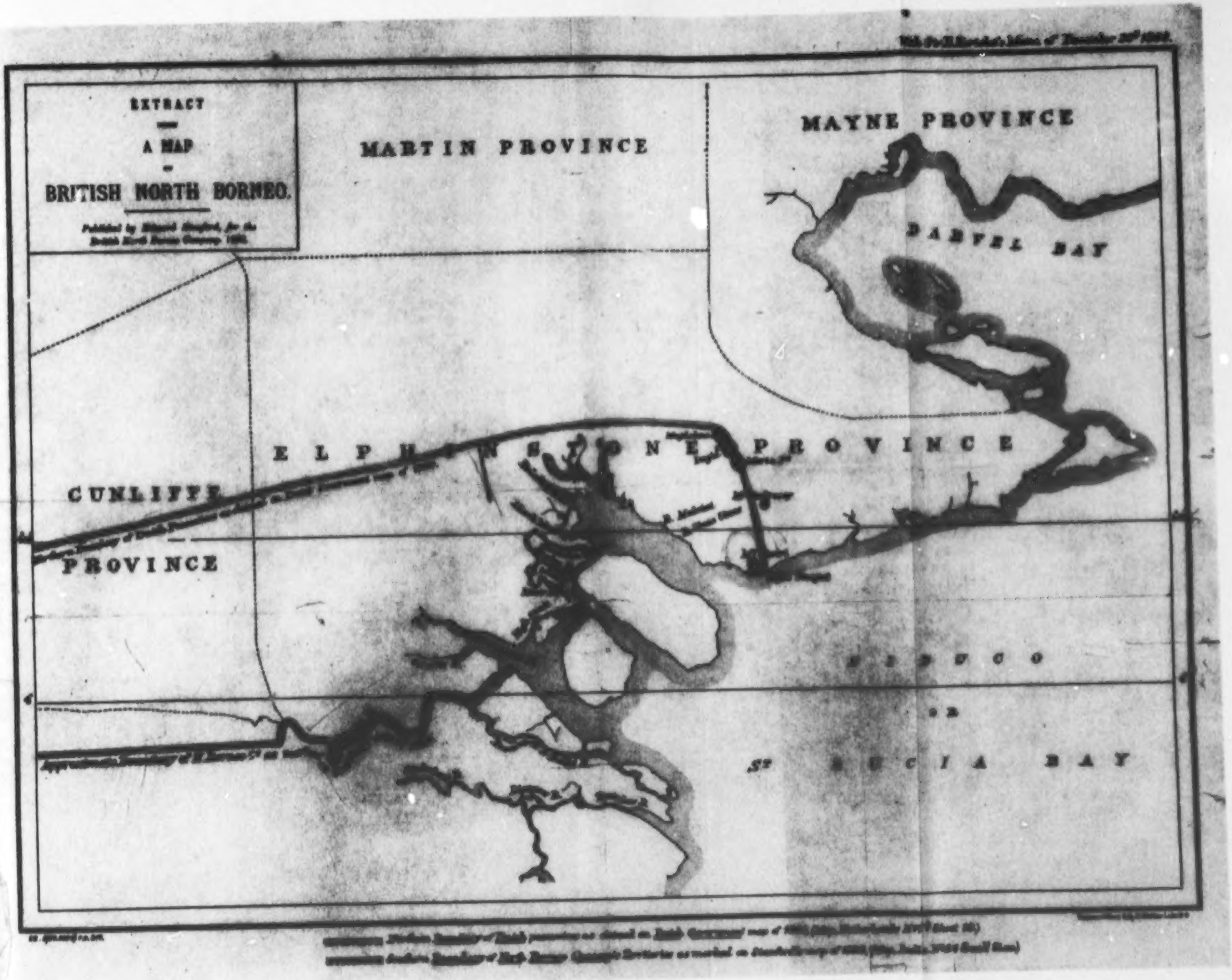


"EXTRACT FROM A MAP OF BRITISH NORTH BORNEO"

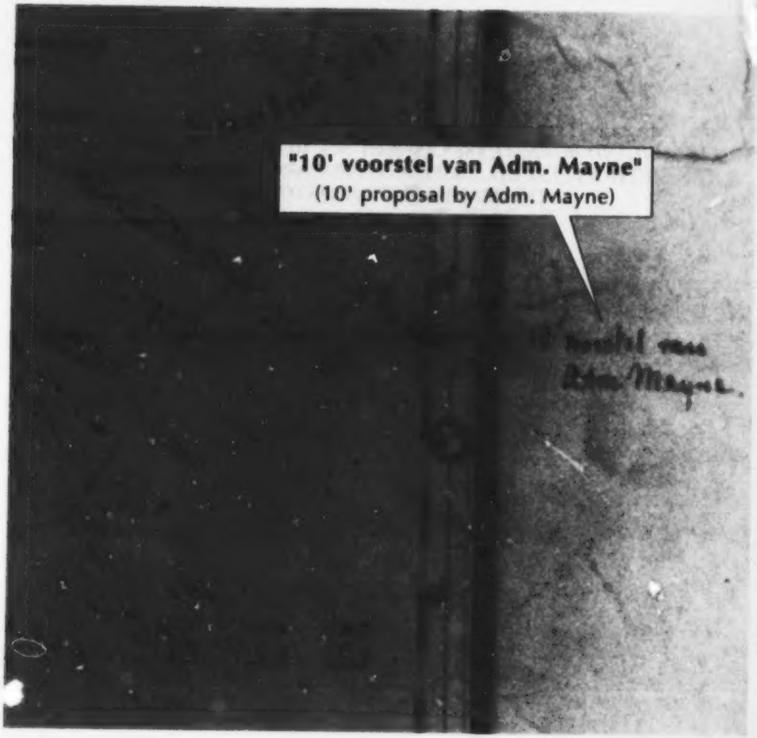
Published by Edward Stanford, for the British North Borneo Company, 1888.

Small black dash
Small black cross
Pencil line

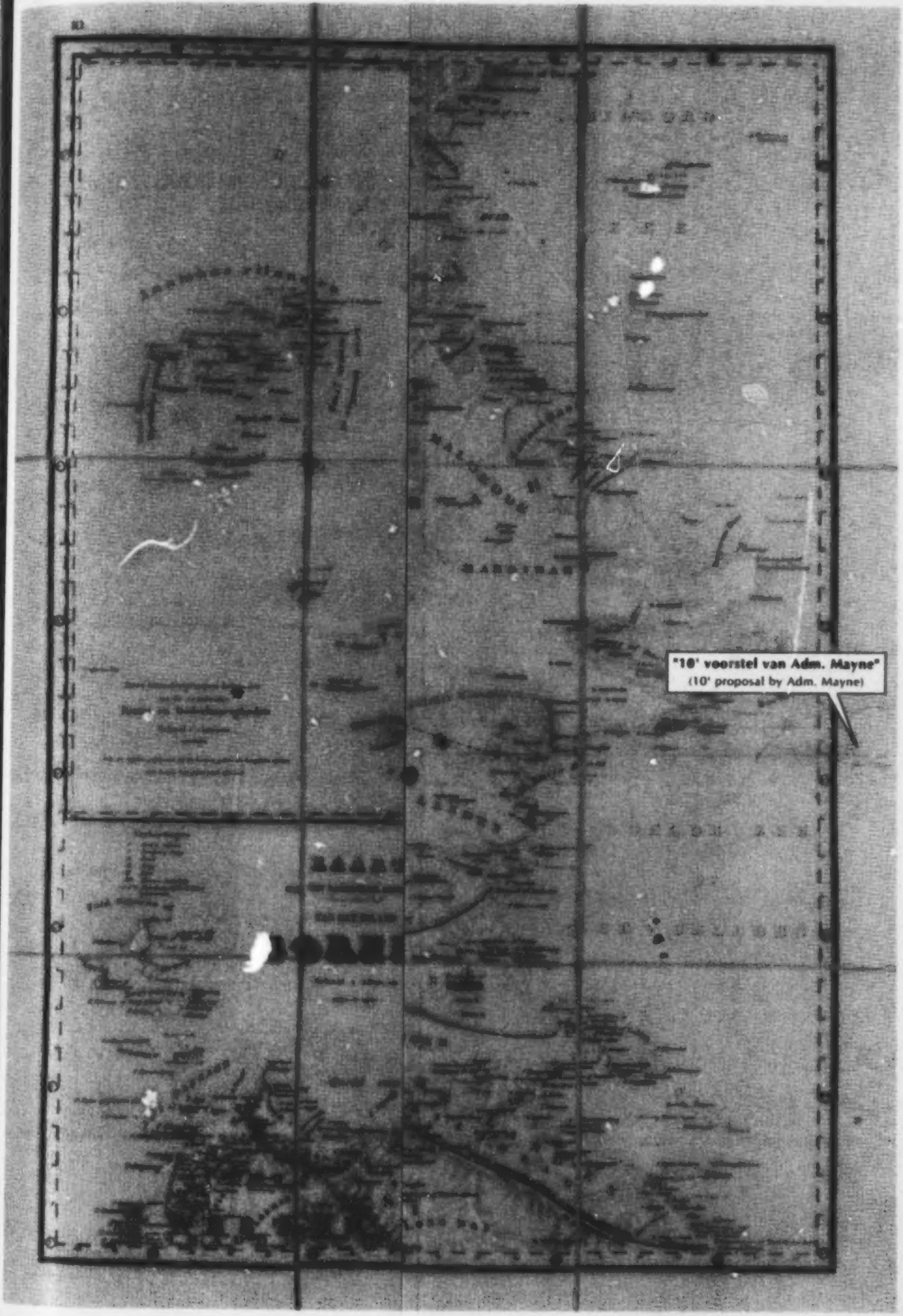

EXTRACT
A MAP
BRITISH NORTH BORNEO.
MARTIN PROVINCE
MAYNE PROVINCE
DARVEL BAY
ELPHINSTONE PROVINCE
CUNLIFFE PROVINCE
SIBUCO
OR
ST LUCIA BAY

Annex 23

MAP ENTITLED *KAART VAN HET NOORDELIJK GEDEELTE VAN HET EILAND BORNEO*, 1885, (SHEET NO. 10 FROM ATLAS STEMFOORT & TEN SIETHOFF, 1ST ED., 1885), WITH ENLARGEMENT HIGHLIGHTING THE MANUSCRIPT ANNOTATION

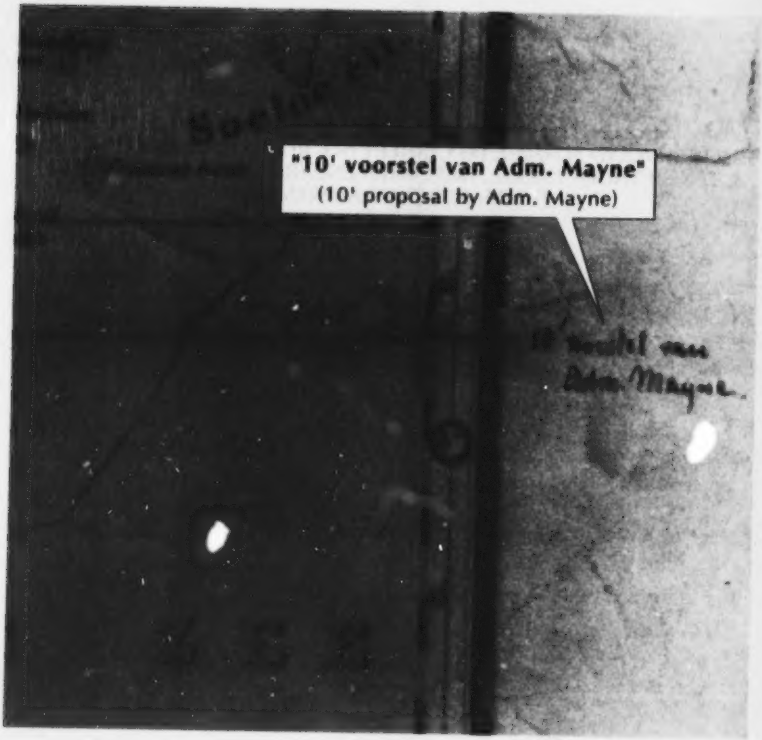

10' voorstel van
Adm. Mayne.

"10' voorstel van Adm. Mayne"
(10' proposal by Adm. Mayne)



"10' voorstel van Adm. Mayne"

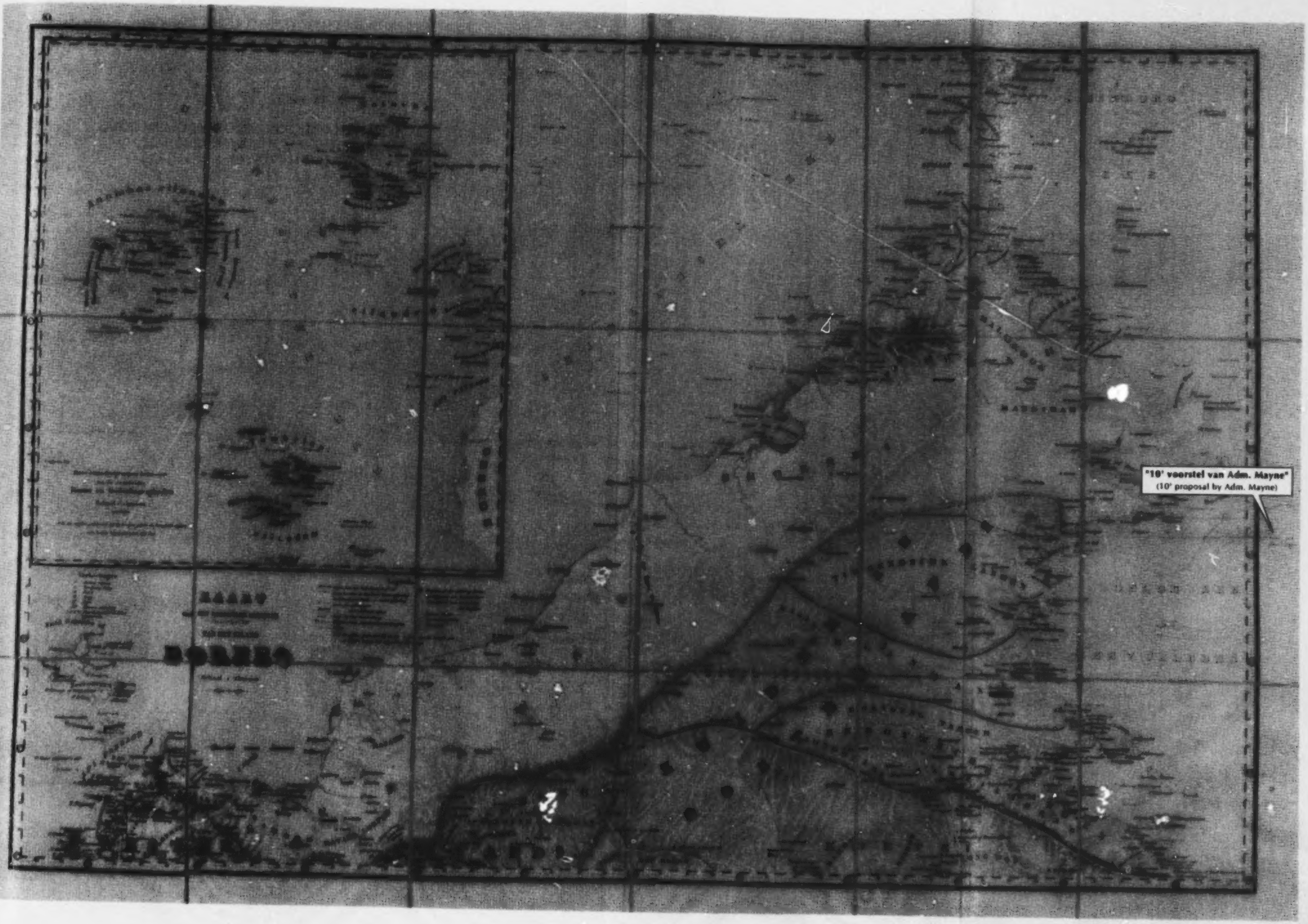
(10' proposal by Adm. Mayne)



10' voorstel van
Adm. Mayne.

"10' voorstel van Adm. Mayne"

(10' proposal by Adm. Mayne)


KAART
BORNEO

"10' voorstel van Adm. Mayne"
(10' proposal by Adm. Mayne)

Annex 24

AIDE MÉMOIRE COMMUNICATED BY THE NETHERLAND CHARGÉ D'AFFAIRES TO THE FOREIGN OFFICE, 19 NOVEMBER 1910

Communicated by the Netherland Chargé d'affaires

Nov: 19. 10

42369

21 NOV 1910

The Netherland Minister for the Colonies at The Hague thinks it advisable to proceed as soon as feasible to the indication on the ground of the frontier between British North Borneo and the Netherland territory, as fixed by the Treaty of June 20. 1891.

All that has been done uptill now consists of the placing of beacons by an Anglo-Dutch Commission on the points where the parallel of 4°. 10. Lat. N. crosses the East Coast of Borneo near Broershoek and where it crosses the West- and East coast of the island of Sebittik [the correct name is Sebatik], and the replacing of these beacons by pole of granite. Both Governments consider these poles as fixing the exact position of the line of the frontier at the coast, as meant in Article V of the Treaty. But there is still uncertainty as to the actual course of the line of the frontier described in Article II of the Treaty, in as far as it refers to the frontier between British North Borneo and the Netherland territory. This uncertainty was shown already to some extent in the correspondence between the Foreign Office and the Netherland Legation

which --

which ended with the note of the Foreign Office of October 3. 1905.

This uncertainty moreover makes itself felt along the whole frontier between British North Borneo and the Netherland territor in connection with the actual interests, British as well as Dutch, which have come into existence now: for instance the getah (rubber) which these regions may produce, the exploitation of coal mines mentioned in the note of the Foreign Office of May 7. 1908 No 14628; the railway projected according to a map issued by the British North Borneo Company reports concerning the intended placing of a British District Officer on the Si-Lise River, the mouth of which (in the Tagal, tributary of the Sembakoeng) is situated in Netherland territory.

It may therefore be assumed, also in order to prevent future difficulties, that the indication of the frontier as mentioned

above

above is desirable. The Netherland Minister for the Colonies and the Governor General of Netherland India are both of opinion that in the actual circumstances, there is no doubt as to its practicableness, as the excursions undertaken in recent years in these regions from Netherland as well as from British side, have shown the possibility to explore them.

The Netherland Minister for the Colonies therefore thinks that the time has come to open the negotiations with the British Government mentioned in the Treaty of June 20. 1891, concerning the indication of the frontier between British North Borneo and the Netherland Territory, and suggests a mixed Commission to be appointed to indicate the frontier on the ground, to describe it and to prepare a map of same.

Annex 25

REPORT ENTITLED *BOUNDARY DELIMITATION BETWEEN THE NETHERLAND POSSESSIONS AND THE STATE OF BRITISH NORTH BORNEO*, 17 FEBRUARY 1913

BOUNDARY DELIMITATION BETWEEN THE NETHERLAND POSSESSIONS AND THE STATE OF BRITISH NORTH BORNEO.

February 17, 1913.

WE, the undersigned: J. H. G. Schepers, engineer of the Triangulation Brigade, Netherland India, E. A. Vreede, 2nd Lieutenant of the Netherland Royal Navy, appointed by Netherland India Government Resolution No. 1 of the 9th April, 1912, and No. 38 of the 30th October, 1912, respectively, as leader and Joint Commissioner of the Netherland Commission to delimitate on the spot the frontier between Netherland territory and the State of British North Borneo; H. W. L. Bunbury, officer of the First Class, British North Borneo Civil Service, G. St. V. Keddell, surveyor, appointed by commission from his Excellency the Governor of British North Borneo, dated the 30th May, 1912, respectively, as Civil Commissioner and Surveyor representing the Government of British North Borneo; have the honour to report as follows:—

1. We have travelled in the neighbourhood of the frontier from the 8th June, 1912, to the 30th January, 1913, during which period the Netherland Commission has made the necessary astronomical observations and topographical surveys, the results of which we declare to be correct and sufficient for the determination of the boundary.

2. Where physical features did not present natural boundaries conformable with the provisions of the Boundary Treaty of the 20th June, 1891, we have erected the following pillars:—

(*a.*) Two pillars on the opposite banks of the Pentjiangan River, both marked "G.P. 1."

(*b.*) One pillar on the right bank of the Agisan River, marked "G.P. 3."

(*c.*) One pillar on the left bank of the Seboeda River, marked "G.P. 2."

All being on the parallel 4° 20′ north latitude.

3. We have determined the boundary between the Netherland territory and the State of British North Borneo, as described in the Boundary Treaty supplemented by the interpretation of Article 2 of

the Treaty mutually accepted by the Netherland and British Governments in 1905 as taking the following course:—

(1.) Traversing the island of Sibetik, the frontier line follows the parallel of 4° 10′ north latitude, as already fixed by Article 4 of the Boundary Treaty and marked on the east and west coasts by boundary pillars.

(2.) Starting from the boundary pillar on the west coast of the island of Sibetik, the boundary follows the parallel of 4° 10′ north latitude westward until it reaches the middle of the channel, thence keeping a mid-channel course until it reaches the middle of the mouth of Troesan Tamboe.

(3.) From the mouth of Troesan Tamboe the boundary line is continued up the middle of this Troesan until it is intersected by a similar line running through the middle of Troesan Sikapal; it then follows this line through Troesan Sikapal as far as the point where the latter meets the watershed between the Simengaris and Seroedong Rivers (Sikapal hill), and is connected finally with this watershed by a line taken perpendicular to the centre line of Troesan Sikapal.

(4.) From the point where this watershed (Sikapal hill) meets Troesan Sikapal the boundary line follows the watershed until the latter joins Mount Bemboeding.

[*Note*.—There is thus included in the Netherland territory all the country that is drained by the Simengaris River and its tributaries, while all the country that is drained by the Seroedong River and its tributaries is included in the territory of British North Borneo.]

(5.) Leaving the junction point of the Simengaris–Seroedong watershed with Mount Bemboeding, the boundary line follows successively—

(*a*.) Mount Bemboeding in a northerly direction.

(*b*.) Mount Pemantoengan Bagas and Mount Meliat in a westerly direction.

(*c*.) Mount Keblajoeng in a south-easterly direction.

(*d*.) The watershed between the Karawangan and Apat Rivers in a south-westerly direction.

(*e*.) The Inoeloeh Ketok hill in a northerly direction.

(*f*.) The watershed between the Loeloewejen and Siangan streams in a westerly direction.

(*g*.) The most western spur of this watershed, intersected by a straight line running due east from boundary pillar "G.P. 2"

(*h*.) Along this straight line as far as pillar "G.P. 2"

[*Note*.—There is thus included in the Netherland territory all the country that is drained by any of the following rivers and their tributaries: Seboeloeh, Mesaloei, Tempilan, Apat, and Toelit, together with the Seboeda south of 4° 20′ north latitude and its eastern tributaries debouching south of that parallel; and in the territory of British North Borneo all the country drained by the Seroedong and its tributaries, and by the Seboeda north of 4° 20′ north latitude, and by the tributaries of the Seboeda debouching above that parallel.]

(6.) From the pillar "G.P. 2" the boundary line follows (*a*.) A straight line running due west as far as the most eastern spur of the watershed between the Linemoejoe and Labau streams, intersected by this straight line.

(*b*). The above-mentioned spur.

(*c*.) The watershed between the Linemoejoe and Labau streams.

(*d*.) The watershed between the Labau and Balang streams.

(*e*.) The watershed (the Sinogo ridge) between the Agisan and Seboeda Rivers

(*f*.) The watershed between the Lakoetan and Makalap streams.

(*g*.) The most western spur of the latter watershed, intersected by a straight line running due east from boundary pillar "G.P. 3."

(*h*.) This straight line itself as far as pillar "G.P. 3."

[*Note*.—There is thus included in the Netherland territory all the country drained by the western tributaries of the Seboeda and the eastern tributaries of the Agisan debouching below 4° 20′ north latitude, and in the territory of British North Borneo the country drained by the corresponding tributaries debouching above that parallel.]

(7.) From the pillar "G.P. 3" the boundary line follows successively—

(*a*.) A straight line running due west as far as the most eastern spur of the watershed between the Klawasan and Mesaloei streams intersected by this line.

(*b*.) The above-mentioned spur.

(*c*.) The watershed between the Klawasan and Mesaloei streams.

(*d*.) The watershed (Peloetan ridge) between the Sesoegon and Agisan streams.

(*e*.) The main watershed between the Sembakoeng and Seboekoe Rivers in a south-westerly direction.

(*f*.) The watershed (Mount Boedjoek Bah) between the Sementebel, with its tributaries, and the Semantaloen, with its tributaries.

(*g*.) The watershed (Mount Boedjoek Bah) between the Sementebel, with its tributaries, and the Seliman and Semangawat, with their tributaries.

(*h*.) The watershed (Poegisini hill) between the Semandapi, with its tributaries, and the Sementebel, with its tributaries, as far as the Toemoegan hill.

(*i*.) The watershed between the Semandapi, with its tributaries, and the eastern tributaries of the Pentjiangan River debouching below 4° 20′ north latitude, as far as the intersection of this watershed with a straight line running due east from the pillar "G.P. 1" on the left bank of the Pentjiangan.

(*j*.) This straight line itself.

[*Note*.—There is thus included in the Netherland territory all the country drained by the Agisan River south of 4° 20′ north latitude, and by the western tributaries of the Agisan debouching below that parallel, and by the eastern tributaries of the Pentjiangan debouching below the same parallel; and in the territory of British North Borneo all the country drained by the Agisan River north of 4° 20′ north latitude, and by the western tributaries of the Agisan and eastern tributaries of the Pentjiangan River debouching above 4° 20′ north latitude.]

(8.) From the pillar "G.P. 1" on the left bank of the Pentjiangan River the boundary line follows successively—

(a.) A line running due west to the pillar "G.P. 1" on the right bank.

(b.) The first hill-spur south of the Lombai stream as far as its junction with the main watershed between the tributaries of the Pentjiangan debouching north of 4° 20′ north latitude and the tributaries that debouch south of that latitude.

(c.) The last-named watershed as far as the Seselatan hill.

(d.) The watershed, or series of watersheds, dividing the northern tributaries of the Sedalir that debouch above 4° 20′ north latitude from those that debouch below that parallel.

(e.) The most western spur of this watershed, or series of water-sheds, intersected by parallel 4° 20′ north latitude.

(f.) The parallel 4° 20′ north latitude, crossing the Sedalir [illegible] until it meets the most eastern spur of the watershed, or series of watersheds, between the southern tributaries of the Sedalir that debouch above parallel 4° 20′ north latitude and those that debouch below that parallel, in conformity with Article 2 of the Treaty.

(g.) The last-named watershed, or series of watersheds (if necessary, the watershed between the Sedalir and the Sesajap Rivers), until they meet the main watershed described in Article 3 of the Treaty.

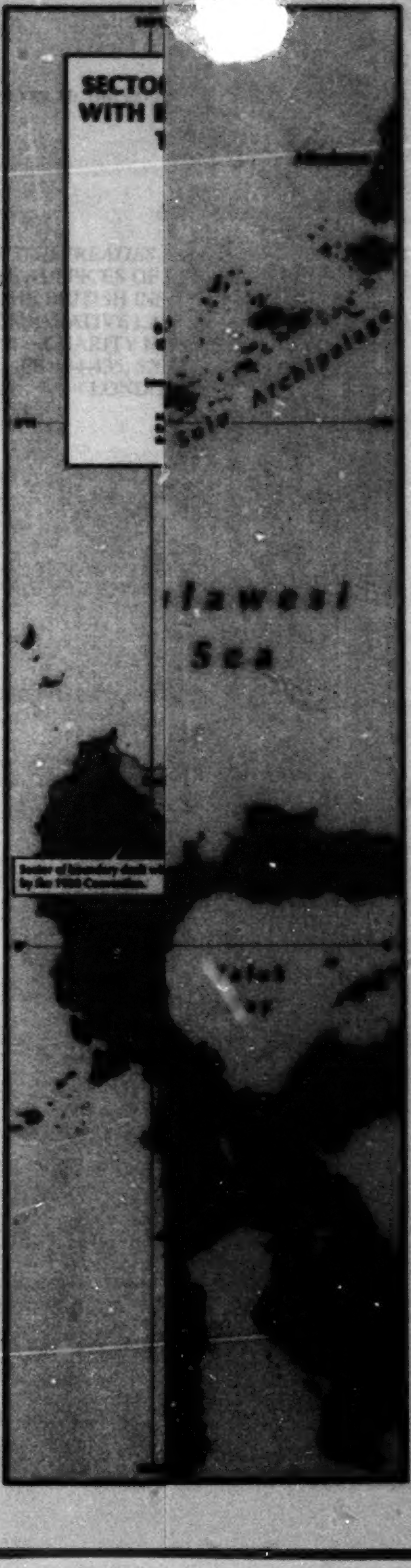
[*Note.*—There is thus included in the Netherland territory the country that is drained by the Pentjiangan below 4° 20′ [illegible] latitude, by the Sedalir below that parallel, by the tributaries of [illegible] of these rivers debouching below 4° 20′ north latitude, and [illegible] Sesajap River; and in the territory of British North Borneo [illegible] country that is drained by the Pentjiangan north of 4° 20′ latitude, by the Sedalir north of that parallel, and by the tributaries of both of these rivers debouching north of 4° 20′ north latitude.]

To the above we have all agreed and appended our signatures [illegible] Tawao British North Borneo, this 17th day of February, 1913.

J. H. G. SCHEPEL.
F. A. VREEDE.
W. H. L. BUNBURY.
G. ST. V. KEDDELL.

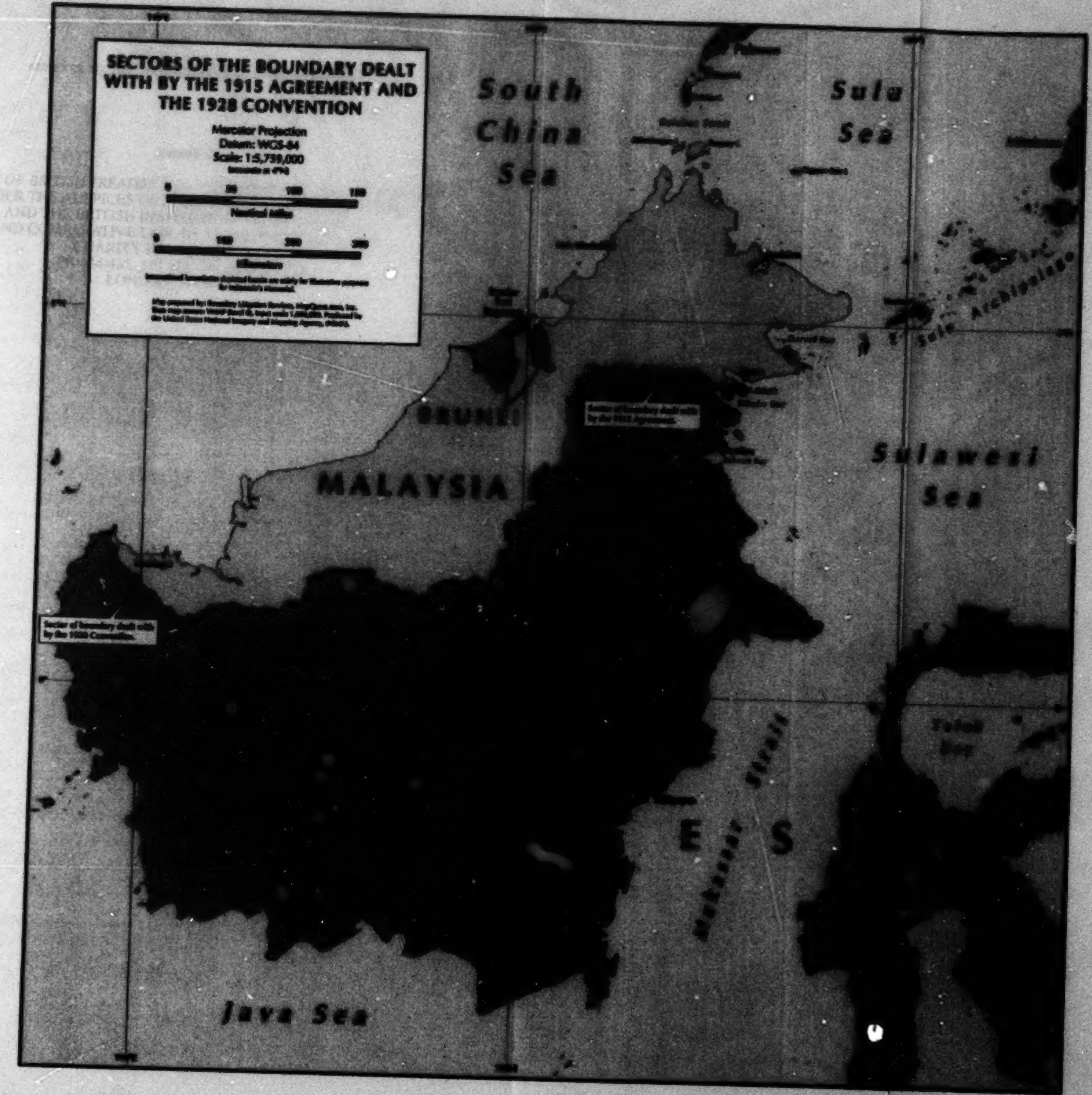
Annex 26

SKETCH MAP SHOWING THE BOUNDARY LINE ON THE MAP ATTACHED TO THE AGREEMENT OF 28 SEPTEMBER 1915 AND THE BOUNDARY LINE ON THE MAP ATTACHED TO THE CONVENTION OF 26 MARCH 1928


SECTO
WITH
Sulu Archipelago
lawesi
Sea
Sector of boundary dealt w
by the 1928 Convention.

Annex 26

SKETCH MAP SHOWING THE BOUNDARY LINE ON THE MAP ATTACHED TO THE AGREEMENT OF 28 SEPTEMBER 1915 AND THE BOUNDARY LINE ON THE MAP ATTACHED TO THE CONVENTION OF 26 MARCH 1928



SECTORS OF THE BOUNDARY DEALT WITH BY THE 1915 AGREEMENT AND THE 1928 CONVENTION

Mercator Projection
Datum: WGS-84
Scale: 1:5,739,000

0
50
100
150
Nautical Miles
0
100
200
300
Kilometers
South China Sea
Sulu Sea
Sulu Archipelago
BRUNEI
MALAYSIA
Sulawesi Sea
Sector of boundary dealt with by the 1915 Agreement.
Sector of boundary dealt with by the 1928 Convention.
Makassar Strait
E S
Tolo Bay
Java Sea

Annex 27

AN INDEX OF *BRITISH TREATIES 1101-1968*, COMPILED AND ANNOTATED UNDER THE AUSPICES OF THE INTERNATIONAL LAW FUND AND THE BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW, BY CLIVE PARRY LL.D. AND CHARITY HOPKINS M.A., LL.B., PP. 434-435, 520-521, 584-585, 720-721, LONDON, HMSO, 1970

An Index of British Treaties 1101-1968

compiled and annotated under the auspices of the International Law Fund and the British Institute of International and Comparative Law

by

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and

CHARITY HOPKINS M.A., LL.B.

of Gray's Inn, Barrister at Law, Fellow and Tutor of Girton College, Cambridge

London
Her Majesty's Stationery Office 1970

24 MAY 1971

Signed at Madrid *14 April 1891*. Ratifications exchanged at Madrid: Great Britain, France, Spain, Switzerland, Tunis 15 June 1892; Portugal 10 November 1893. Accessions: Cuba 1 January 1905. Entry into force:15 July 1892. Duration: as for the Convention of 20 March 1883. Revised by Agreements of 2 June 1911 and 6 November 1925 between the parties thereto. Revived for Austria and Hungary by Treaties of 10 September 1919 and 4 June 1920 respectively. Terminated by Agreements of 2 June 1934 and 31 October 1958 between the parties thereto.
[T.S. 13(1892), C. 6818; P. (1892) XCV 743; 96 B.S.P. 837; 19 H.C.T. 307; H.B.C.T. (1912) 406.]

Protocol respecting the expenses of the INTERNATIONAL OFFICE OF INDUSTRIAL PROPERTY.
Signed at Madrid *15 April 1891*. Ratifications exchanged at Madrid: Great Britain, Belgium, France, Spain, Sweden and Norway, Switzerland, Tunis, United States of America 15 June 1892; Portugal 10 November 1893. Accessions: Dominican Republic, Servia 18 October 1897; Germany 1 May 1903; Cuba 17 November 1904; Austria, Hungary 1 January 1909. Entry into force: 15 July 1893. Duration: as for the Convention of 20 March 1883. Terminated by Convention of 2 June 1911 between the parties thereto.
[T.S. 14(1892), C. 6819; P. (1892) XCV 143; 83 B.S.P. 678; 19 H.C.T. 309; H.B.C.T. (1912) 408; 22 Martens (IV) 218.]

Protocol between the Governments of Great Britain and ITALY for the demarcation of their respective spheres of influence in Eastern Africa.
Signed at Rome *15 April 1891*. Entry into force: immediately.
[C. 6316; P. (1890-1) XCVI 388; 83 B.S.P. 19; 19 H.C.T. 687; M.A.T. 687.]

Additional Articles to the Convention with SWEDEN of 7/13 September 1881 for an exchange of post office money orders.
Signed at London/Stockholm *10/17 April 1891*. Entry into force: 1 May 1891. Duration: as for the Convention of 7/12 September 1881.
[C. 6389; P. (1890-1) XCVI 429; 83 B.S.P. 21; 19 H.C.T. 943.]

Declaration with the Government of BELGIUM respecting the North Sea fisheries.
Signed at Brussels *2 May 1891*. Ratifications exchanged at Brussels 25 August 1891. Entry into force: 15 September 1891. Duration: 3 years; unless denounced 1 year before expiration, to continue for periods of 1 year, terminable at the end of any period on 1 year's notice. Supplemented by Protocol of 29 August 1891.
[T.S. 1(1892), C. 6567; P. (1892) XCV 135; 83 B.S.P. 22; 19 H.C.T. 111; 18 Martens (IV)179.]

Declaration with PORTUGAL prolonging the duration of the Agreement of 14 November 1890 respecting spheres of influence in Africa until 14 June 1891.
Signed at London *13 May 1891*. Entry into force: immediately.
[83 B.S.P. 25; 19 H.C.T. 776.]

Agreement with TONGA relative to the trial of British subjects by the Tongan courts.
Signed at Nuku'alofa *2 June 1891*. Entry into force: immediately.
Duration: as for the Treaty of 29 November 1879.

[T.S. 5(1892), C. 6594; P. (1892) XCV 749; 83 B.S.P. 38; 19 H.C.T. 847; 18 Martens (IV) 184.]

Treaty between Great Britain and PORTUGAL defining the spheres of influence of the two countries in Africa.
Signed at Lisbon *11 June 1891*. Ratifications exchanged at London 3 July 1891. Entry into force: 3 July 1891. Modified by Declaration of 12 August 1893. Articles 1-5 terminated on 28 October 1955 by Agreement of 18 November 1954.
[C. 6375; P. (1890-1) XCVI 417; 83 B.S.P. 27; 19 H.C.T. 777; M.A.T. 731.]

Notes exchanged with PORTUGAL regarding the traffic rates on the railway from Pungwe Bay and the British sphere.
Lisbon, *11 June 1891*. Entry into force: immediately.
[83 B.S.P. 891; 21 H.C.T. 746.]

Notes exchanged with PORTUGAL respecting the importation of spirits to the banks of the Zambesi and Shiré rivers.
Lisbon, *11 June 1891*. Entry into force: immediately.
[83 B.S.P. 891; 21 H.C.T. 747.]

Notes exchanged with PORTUGAL regarding the leasing of land on the Chinde mouth of the Zambesi and on Lake Nyasa.
Lisbon, *11 June 1891*. Entry into force: immediately.
[83 B.S.P. 890; 21 H.C.T. 745; M.A.T. (3 ed.) 1025.]

Protocol between the United States of America, Great Britain and Portugal in reference to ARBITRATION OF CLAIMS against Portugual [DELAGOA BAY RAILWAY].
Signed at Berne *13 June 1891*. Entry into force: immediately.
[2 Malloy 1460.]

Treaty with CHIEF KAWINGA.
Signed at Chikala *15 June 1891*. Entry into force: immediately.
[85 B.S.P. 338; 20 H.C.T. 14.]

Agreement with the UNITED STATES OF AMERICA for a modus vivendi in relation to the fur-seal fisheries in Behring Sea.
Signed at Washington *15 June 1891*. Entry into force: immediately.
[84 B.S.P. 492; 19 H.C.T. 868.]

Agreement with FRANCE relating to the telephonic service between London and Paris.
Signed at Paris/London *17 May/16 June 1891*. Approved by Declaration of 19 November 1891. Entry into force: date to be agreed upon. Duration: terminable on 3 months' notice.
[83 B.S.P. 45; 19 H.C.T. 215.]

Convention with the NETHERLANDS defining boundaries in Borneo.
Signed at London *20 June 1891*. Ratifications exchanged at London 11 May 1892. Entry into force: 11 August 1892. Interpreted by Exchange of Notes of 16 March/3 October 1905. Supplemented by Convention of 26 March 1928 from 6 November 1930.
[T.S. 11(1892), C. 6553; P. (1892) XCV 721; 83 B.S.P. 41; 19 H.C.T. 758; M. & G. 215; 18 Martens (IV) 644.]

Agreement with FRANCE for the demarcation of spheres of influence in Africa (Niger districts).

Exchange of Notes with the NETHERLANDS relative to the interpretation of Article II of the Convention with the Netherlands signed at London on 20 June 1891 defining boundaries in Borneo.
16 March/3 October 1905. Entry into force: immediately.
[114 B.S.P. 346.]

Agreement with the Post Office of SWITZERLAND concerning the exchange of money orders.
Signed at London/Berne *8/17 October 1905.* Entry into force: 1 November 1905. Duration: terminable on 6 months' notice.
[Cd. 2939; P.(1906) CXXXVI 557; 98 B.S.P. 100; 25 H.C.T. 1182.]

Convention between the United Kingdom and DENMARK providing for the settlement by arbitration of certain classes of questions which may arise between the two Governments.
Signed at London *25 October 1905.* Ratifications exchanged at London 4 May 1906. Entry into force: 4 May 1906. Duration: 5 years. Prolonged as regards Denmark until 4 May 1931 by Conventions of 3 March 1911, 3 May 1916, 1 May 1922 and 4 June 1926. Prolonged as regards Iceland until 4 May 1940, thereafter terminable on 1 year's notice, by Conventions of 3 March 1911, 3 May 1916, 1 May 1922 and 4 June 1926 and Exchanges of Notes of 10 October 1936 and 22 March 1937.
[T.S. 5(1906), Cd. 2921; P.(1906) CXXXVI 185; 98 B.S.P. 44; 24 H.C.T. 383; 25 Martens (IV) 408.]

Treaty of commerce and navigation with ROUMANIA, with Declaration.
Signed at Bucharest *31 October 1905.* Ratifications exchanged at Bucharest 17 March 1906. Extensions: British Honduras, Ceylon, Cyprus, Gold Coast, Hong Kong, Leeward Islands, Malta, Northern Nigeria, St. Helena, Seychelles, Sierra Leone, Somaliland, Southern Nigeria, Straits Settlements, Uganda, Weihaiwei 1906-7. Entry into force: 17 March 1906. Duration: 3 years, thereafter terminable on 12 months' notice. Supplemented by Exchange of Notes of 19 February 1906. Denounced by Roumania with effect 18 April 1922.
[T.S. 3(1906), Cd. 2918; P.(1906) CXXXVI 509; 98 B.S.P. 88; 24 H.C.T. 949; H.B.C.T. (1912) 730; 25 Martens (IV) 413.]

Agreement with the Royal Imperial AUSTRIAN POSTAL ADMINISTRATION concerning the exchange of money orders.
Signed at London/Vienna *28 October/10 November 1905.* Entry into force: as from 1 April 1904. Duration: terminable on 6 months' notice
[Cd. 2913; P.(1906) CXXXVI 11; 98 B.S.P. 38; 25 H.C.T. 18.]

Agreement with the HUNGARIAN POSTAL ADMINISTRATION concerning the exchange of money orders.
Signed at London/Budapest *28 October/16 November 1905.* Entry into force: as from 1 April 1904. Duration: terminable on 6 months' notice.
[Cd. 2910; P.(1906) CXXXVI 307; 98 B.S.P. 56; 25 H.C.T. 21.]

Exchange of Notes with the SWEDISH GOVERNMENT respecting the validity of treaties concluded in common by Sweden and Norway.
London, *6/16 November 1905.* Entry into force: immediately.
[98 B.S.P. 833; 24 H.C.T. 1033; H.B.C.T. (1931) 662.]

Exchange of Notes with the NORWEGIAN GOVERNMENT respecting the validity of treaties concluded in common by Sweden and Norway.
London, *16/23 November 1905*. Entry into force: immediately.
[98 B.S.P. 834; 24 H.C.T. 837; H.B.C.T.(1931) 489.]

Convention with FRANCE respecting telegraphic communication between Mauritius and Réunion.
Signed at Paris *6 December 1905*. Ratifications exchanged at Paris 10 January 1906. Entry into force: 10 January 1906. Duration: 25 years from the opening of the cable for traffic, thereafter terminable on 1 year's notice. Denounced by the United Kingdom with effect 21 December 1937.
[T.S. 2(1906), Cd. 2815; P.(1906) CXXXVI 217; 98 B.S.P. 51; 24 H.C.T. 423.]

Commercial Convention with BULGARIA, with Final Protocol and Declaration.
Signed at Sofia *9 December 1905*. Ratifications exchanged at Sofia 28 November 1907. Extensions: Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, British Guiana, British Honduras, Ceylon, Cyprus, East Africa Protectorate, Falkland Islands, Federated Malay States (Negri Sembilan, Perak, Selangor), Fiji, Gambia, Gilbert and Ellice Islands, Gold Coast, Grenada, Hong Kong, Jamaica (including Turks and Caicos Islands), Leeward Islands (Antigua, Montserrat, St. Christopher-Nevis, Virgin Islands, Dominica), Malta, Mauritius, Northern Nigeria, Nyasaland Protectorate, St. Helena, St. Lucia, St. Vincent, Seychelles, Sierra Leone, Solomon Islands Protectorate, Southern Nigeria, Southern Rhodesia, Straits Settlements, Trinidad and Tobago, Uganda Protectorate, Weihaiwei. Entry into force: as from 14 January 1906. Duration: 4 years, thereafter terminable on 12 months' notice. Supplemented by Procès-verbal of 13 November 1908. Modified by Agreement of 9 February 1909.
[T.S. 1(1908), Cd. 3858; P.(1908) CXXV 15; 98 B.S.P. 864; 25 H.C.T. 53; H.B.C.T.(1912) 51; 24 Martens (IV) 738.]

Protocol between the Colony of the CAPE OF GOOD HOPE, the Colony of NATAL, the ORANGE RIVER COLONY, the Colony of the TRANSVAAL and the Territory of SOUTHERN RHODESIA respecting the admission of North-Western Rhodesia to the Customs Union Convention of 6/12/25 May/3 June 1903.
Signed at Pietermaritzburg/Cape Town/Salisbury/Johannesburg *16/23/29 November/11 December 1905*. North-Western Rhodesia assented 15 February 1906. Entry into force: as from 1 December 1905.
[24 H.C.T. 128.]

Exchange of Notes with DENMARK respecting the reciprocal protection of trade-marks in China.
Copenhagen, *11 November/11 December 1905*. Entry into force: immediately.
[99 B.S.P. 914; H.B.C.T.(1931) 168.]

Agreement between the British Government and the State of NAWANAGAR for the construction of a line of telegraph from a point on the line from Dhool to Jodiya to Balambha.
Signed at Guzerat *26 December 1905*. Entry into force: immediately.
[6 A. 175.]

Agreement between the Postal Administration of Ceylon and the Postal Administration of the Province of MOZAMBIQUE.
Signed at Colombo *9 February 1915*. Entry into force: provisionally, 1 July 1915; definitively, on ratification. Duration: terminable on 1 year's notice.
[109 B.S.P. 841; 28 H.C.T. 1050.]

Agreement with ITALY for the prolongation for 1 year of the period fixed by Article IV of the *Italo-Britannic Agreement* of 13 January 1905 relative to the territory in the neighbourhood of Khisimayu leased by the British Government to the Italian Government.
Signed at Rome *23 March 1915*. Entry into force: immediately.
[110 B.S.P. 322; 28 H.C.T. 932.]

Convention with the NETHERLANDS *renewing* for a further period of 5 years the Arbitration Convention of 15 February 1905.
Signed at London *25 March 1915*. Ratifications exchanged at London 12 July 1915. Entry into force: 12 July 1915.
[T.S. 5(1915), Cd. 7962; P. (1914-6) LXXXIV 71; 109 B.S.P. 855; 27 H.C.T. 988.]

Agreement between Great Britain, France, Russia and Italy providing for Italian naval and military co-operation with the Allied Powers in the EUROPEAN WAR, and making certain territorial and other arrangements. (Secret.)
Signed at London *26 April 1915*. Entry into force: immediately.
[Cmd. 671; P. (1920) LI 261; 112 B.S.P. 973; 29 H.C.T. 996.]

Declaration between Great Britain, France, Italy and Russia engaging not to conclude a separate PEACE during the course of the EUROPEAN WAR.
Signed at London *26 April 1915*. Entry into force: immediately.
[Cmd. 671; P. (1920) LI 267; 112 B.S.P. 977; 29 H.C.T. 103.]

Declaration between Great Britain, France, Italy and Russia declaring that the Declaration of the same date engaging not to conclude a separate PEACE during the course of the EUROPEAN WAR shall remain secret.
Signed at London *26 April 1915*. Entry into force: immediately.
[Cmd. 671; P. (1920) LI 268; 112 B.S.P. 978; 29 H.C.T. 104.]

Exchange of Notes with FRANCE modifying Article 2 of the Convention of 9 November 1914 relating to prizes captured during the present war.
***15 February/27 April 1915* Entry into force: immediately.**
[Noted, T.S. 5(1916), Cd. 401.]

Agreement for the exchange of parcels between New Zealand and the FRENCH SETTLEMENTS OF OCEANIA.
Signed at Papeete/Wellington *30 March/30 April 1915*. Approved by Declaration of 23 December 1916. Entry into force: as from 1 January 1915.
[T.S. 2(1917), Cd. 8442; P. (1917-8) XXXVIII 383; 110 B.S.P. 517; 28 H.C.T. 75.]

Treaty between the British Government and the IDRISI.
Signed *30 April 1915*. Ratified by Governor-General of India at Delhi 8

...

November 1915. Entry into force: 6 November 1915. Supplemented by Agreement of 22 January 1917.
[11 A. 177.]

Postal Convention with the Post Office Department of the UNITED STATES OF AMERICA.
Signed at London/Washington *4/21 June 1915*. Ratified by the President of the United States at Washington 22 June 1915. Entry into force: 1 July 1915. Duration: terminable on 6 months' notice.
[109 B.S.P. 864.]

Railway Construction Agreement between the Government of KELANTAN and the FEDERATED MALAY STATES Railway Administration.
Signed at Kota Bharu *22 June 1915*. Entry into force: immediately.
[M. & G. 250.]

Agreement between the British Government and the Kotaibi Sheikh [DTHALA].
Signed *June 1915*. Entry into force: immediately.
[11 A. 148.]

Agreement with RUSSIA for the reciprocal waiver of consular fees on certificates of origin relating to exports.
Signed at Petrograd *16 July 1915*. Entry into force: 1 August 1915. Recognised as lapsed by the unratified Treaty with the Union of Soviet Socialist Republics of 8 August 1924.
[T.S. 8(1915), Cd. 8011; P. (1914-6) LXXXIV 161; 109 B.S.P. 862; 27 H.C.T. 1032; H.B.C.T. (1924) 723.]

Agreement modifying the Railway Agreement between the Government of India and the Maharaja of JAMMU AND KASHMIR of 13/19/21 April 1913.
Signed *8 August/14 September 1915*. Entry into force: immediately.
[12 A. 44.]

Agreement with FRANCE concerning the exchange of money orders between the British and French possessions and protectorates in West Africa.
Signed at London *22 September 1915*. Entry into force: date to be agreed upon. Duration: terminable on 1 year's notice.
[T.S. 11(1915), Cd. 8103; P. (1914-6) LXXXIII 1007; 109 B.S.P. 847; 27 H.C.T. 172.]

Agreement with the NETHERLANDS relating to the boundary between the State of North Borneo and the Netherland possessions in Borneo.
Signed at London *28 September 1915*. Entry into force: immediately.
[T.S. 12(1915), Cd. 8105; P. (1914-16) LXXXIV 75; 109 B.S.P. 856; 27 H.C.T. 970.]

Exchange of Notes respecting the accession of Japan to the Declaration of 5 September 1914 between the United Kingdom, France and Russia engaging not to conclude PEACE separately during the present EUROPEAN WAR.
London, *19 October 1915*. Parties: United Kingdom, France, Russia, Japan. Entry into force: immediately.

Protectorate, Cameroons under British mandate), North Borneo, Northern Rhodesia, Straits Settlements, Trinidad and Tobago, Windward Islands (Grenada, St. Lucia, St. Vincent) 5 February 1930; Falkland Islands and Dependencies, Seychelles 10 February 1930; Hong Kong 22 February 1930. Entry into force: 29 May 1929. Duration: terminable on 12 months' notice. Amended by Exchange of Notes of 20/25 November 1929. Denounced by Guatemala with effect 30 August 1936.
[T.S. 30(1929), Cmd. 3429; P.(1929-30) XXXII 453; 129 B.S.P. 309; 97 L.N.T.S. 29; H.B.C.T.(1931) 350.]

Notes exchanged between His Majesty's Government in Great Britain and the HAYTIAN GOVERNMENT for the establishment of a commercial 'modus vivendi'.
Port-au-Prince, *25 February 1928*. Entry into force: 1 March 1928. Duration: 1 year, thereafter terminable on 6 months' notice.
[T.S. 17(1928), Cmd. 3182; P. (1928-9) XXIII 177; 128 B.S.P. 317; 88 L.N.T.S. 91; H.B.C.T. (1931) 357.]

Exchange of Notes with the Government of PARAGUAY prolonging the duration of the Treaty of friendship, commerce and navigation of 16 October 1884.
Asuncion, *16/29 February 1928*. Entry into force: immediately.
[Noted, 128 B.S.P. 53.]

Agreement respecting TELEPHONE service between Great Britain and Northern Ireland and SWITZERLAND via France.
Signed at London/Berne/Paris *14/16 February/8 March 1928*. Parties: United Kingdom, France, Switzerland. Entry into force: date to be agreed upon. Duration: terminable on 1 year's notice.
[80 L.N.T.S. 341.]

Exchange of Notes with the SIAMESE GOVERNMENT regarding the accession of India to certain articles of the Anglo-Siamese General and Commercial Treaties of 14 July 1925.
Bangkok, *5/6/10 March 1928*. Entry into force: immediately.
[14 A. 226.]

Convention of commerce between His Majesty in respect of the Dominion of Canada and the President of the CZECHOSLOVAK REPUBLIC.
Signed at Ottawa *15 March 1928*. Ratifications exchanged at Ottawa 30 October 1928. Entry into force: 14 November 1928. Duration: 3 years, thereafter terminable on 1 year's notice.
[T.S. 28(1929), Cmd. 3397; P. (1929-30) XXXI 81; 128 B.S.P. 467; 82 L.N.T.S. 147; H.B.C.T. (1931) 143.]

Convention between His Majesty and the President of the GERMAN REICH regarding legal proceedings in civil and commercial matters.
Signed at London *20 March 1928*. Ratifications exchanged at Berlin 15 February 1929. Accessions and extensions: Northern Ireland 14 June 1929; Bahamas, Barbados, British Guiana, British Honduras, Brunei, Ceylon, Cyprus, Falkland Islands and Dependencies, Federated Malay States, Fiji, Gambia (Colony and Protectorate), Gibraltar, Gold Coast (Colony, Ashanti, Northern Territories, Togoland under British mandate), Jamaica (including

Turks and Caicos Islands and Cayman Islands), Kenya (Colony and Protectorate), Leeward Islands, Mauritius, North Borneo, Northern Rhodesia, Nyasaland Protectorate, Palestine, St. Helena and Ascension, Sarawak, Seychelles, Sierra Leone (Colony and Protectorate), Somaliland, Straits Settlements, Tanganyika Territory, Trinidad and Tobago, Uganda, Unfederated Malay States (Johore, Kedah, Kelantan, Perlis, Trengganu), Weihaiwei, Windward Islands (Grenada, St. Lucia, St. Vincent), Zanzibar 25 November 1929; New Zealand (including Western Samoa) 1 January 1930; Basutoland, Bechuanaland Protectorate, Bermuda, British Solomon Islands Protectorate, Gilbert and Ellice Islands Colony, Nigeria (Colony and Protectorate), Swaziland, Tonga 14 April 1930; Hong Kong 4 August 1930; Scotland 6 December 1930; Malta 15 February 1931; Cameroons under British mandate 18 May 1932; Australia (including Papua, Norfolk Island, Nauru and New Guinea) 3 January 1933; Southern Rhodesia 8 May 1933; Newfoundland 14 October 1934; Channel Islands, Isle of Man 19 April 1935; Canada 1 August 1935; Aden Colony 23 July 1938. Entry into force: 15 March 1929. Duration: 2 years, 6 months, thereafter terminable on 6 months' notice. Re-applications: between Federal Republic of Germany and United Kingdom, New Zealand (including Cook Islands and Western Samoa) 1 January 1953; Canada 1 November 1953; Federation of Rhodesia and Nyasaland 20 August 1955; Aden Colony, Bahamas, Bermuda, Cyprus, Fiji, Gambia, Gibraltar, Kenya, Montserrat, North Borneo, Nigeria, Sarawak, Seychelles, Sierra Leone, Tanganyika, British Solomon Islands Protectorate, Gilbert and Ellice Islands Colony, Dominica, Grenada, St. Vincent, Basutoland, Bechuanaland Protectorate, Swaziland, Zanzibar 1 November 1959 by Exchange of Notes 14 August/2 November 1959; Antigua, Barbados, British Guiana, British Honduras, British Virgin Islands, Falkland Islands, Hong Kong, Singapore, St. Kitts-Nevis-Anguilla, St. Lucia, Uganda 1 November 1959 by Exchange of Notes of 9 February/9 March 1960; Malta, Mauritius, Trinidad 1 November 1959; Cayman Islands 26 October 1967. Authentic texts: English and German.
[T.S. 5(1929), Cmd. 3286; P. (1928-9) XXIII 151; 129 B.S.P. 302; 90 L.N.T.S. 287.]

Agreement between the Secretary of State for India in Council and the JIND Darbar for the provision by the North Western Railway Administration of a masonry tank at Sangrur station for the reception and storage of liquid fuel oil in bulk by the Jind State.
Signed at Sangrur/Lahore *14 February/23 March 1928*. Entry into force: immediately.
[1 A. 291.]

Convention between His Majesty in respect of the United Kingdom and Her Majesty the Queen of the NETHERLANDS respecting the delimitation of the frontier between the States in Borneo under British protection and the Netherlands territory in that island.
Signed at The Hague *26 March 1928*. Ratifications exchanged at The Hague 6 August 1930. Entry into force: 6 November 1930.
[T.S. 32(1930), Cmd. 3671; P. (1930-1) XXXIV 187; 128 B.S.P. 323; 108 L.N.T.S. 331.]

Agreement between the Government of India and His Highness the Mehtar of CHITRAL.

Annex 28

LETTER FROM VAN WEEDE TO THE DUTCH MINISTER OF FOREIGN AFFAIRS, 3 MARCH 1900 (DUTCH ORIGINAL AND ENGLISH TRANSLATION)

AFSCHRIFT.

MADRID, 3 Maart 1900.

Nr. 61/18.
CAGAYAN Eilanden.

Hoog Edel Gestrenge Heer.

Blykens Uwer Excellentie's missive van den 27sten van de vorige maand, 1ste Afdeeling, nr. 2348/10, heeft by het overseinen van myn cyfertelegram dd. 24 Februari eene grove vergissing plaats gehad. In stede van het woord „[illegible]" moet daar gelezen worden „LIBUT", welke naam in gemeld draadbericht werd aangeduid door de cyfers 0321 en 7419, opgenomen in de volgende groepen: 27330, 32174 en 19796.

Intusschen is ook het woord LIBUT minder goed gekozen, al wordt het hier ook dikwyls gebruikt voor het door my bedoelde SIBUTU. Evenals het door Uwe Excellentie juist omschreven CAGAYAN, ligt dit grondgebied buiten de grenslyn der PHILIPPYNEN, aangeduid in artikel III van het vredesverdrag van 10 December 1898.

Dat de VEREENIGDE STATEN nochthans die eilanden beschouwen als behoorende tot de veroverde koloniën, wordt hier aangezien voor eene vergissing. Men houdt zich dus te MADRID overtuigd, dat het voldoende zal zyn geweest te WASHINGTON op die vergissing te wyzen, om er een einde aan te maken.

Indien ik nu gemeend heb Uwe Excellentie reeds in dezen stand der zaak met bedoelde aangelegenheid te moeten bezig houden, is zulks daaraan toe te schryven, dat volgens myn gevoelen DUITSCHLAND zal trachten het gebied in quaestie over te nemen.

Dat

Zyner Excellentie
Mr. DE BEAUFORT,
Minister van BUITENLANDSCHE ZAKEN.

BEST COPY AVAILABLE

Dat dit laatste niet ligt in de onmiddellyke nabyheid der Nederlandsch-Indische bezittingen, doch tusschen BRITSCH-NOORD-BORNEO en de PHILIPPYNEN, is my zeer wel bekend, doch ontsloeg my, volgens m/n gevoelen, niet van de verplichting Uwe Excellentie op de hoogte van een en ander te brengen.

Uwe Excellentie de enz.

(w.g.) VAN WEEDE.

TRANSLATION

COPY

MADRID, March 3rd 1900

Nr. 61/18
CAGAYAN Islands

Right Honourable Sir,

As appears from your Excellency's official letter dated the 27th of last month, 1st Section, Nr. 2348/12, a gross error has taken place in writing my ciphertelegram dated 24th of February. Instead of the word "YBRAD" the word "LIBUT" should be read, which name was indicated in the above-mentioned telegram by the ciphers 0521 and 7419, included in the following groups: 27350, 32174 and 19796.

Meanwhile also the word LIBUT has not been chosen well, even though here it is also used frequently to denote SIBUTU, as was my intention. Just like the island of CAGAYAN, correctly described by Your Excellency, this territory lies outside the boundary-line of the PHILIPPINES, specified in article III of the peace-treaty of December 10, 1898.

The fact that the UNITED STATES nevertheless consider the islands to belong to the conquered colonies, is regarded here as an error. In MADRID it is understood therefore, that to end this it will have sufficed to point out this error in WASHINGTON.

If I have now thought to have to occupy Your Excellency already during this stage with the matter concerned, this is to be attributed to the fact that in my opinion GERMANY will try to take over the territory at issue.

That this territory does not lie in the immediate proximity of the Dutch-Indies' possessions, but between BRITISH NORTH BORNEO and the PHILIPPINES, is very well known to me, but did not, in my opinion, release me from the obligation to inform Your Excellency of these matters.

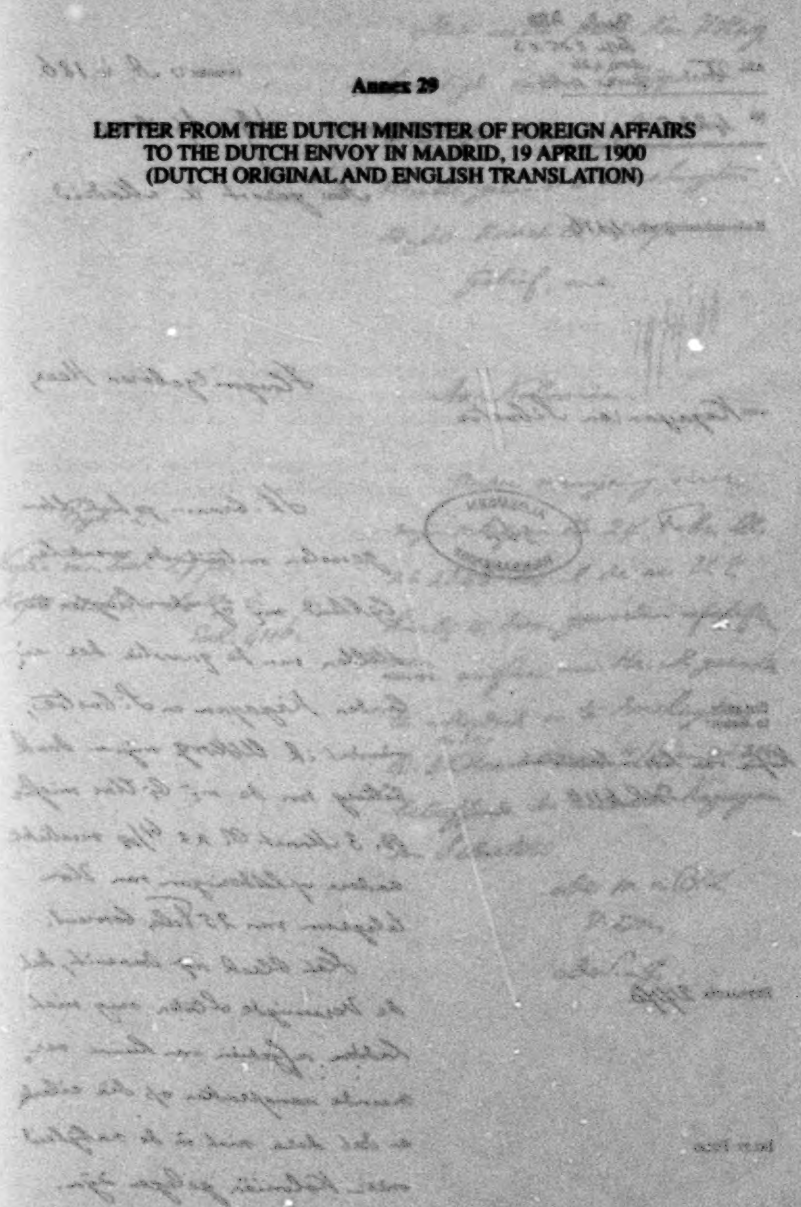
Your Excellency etc.

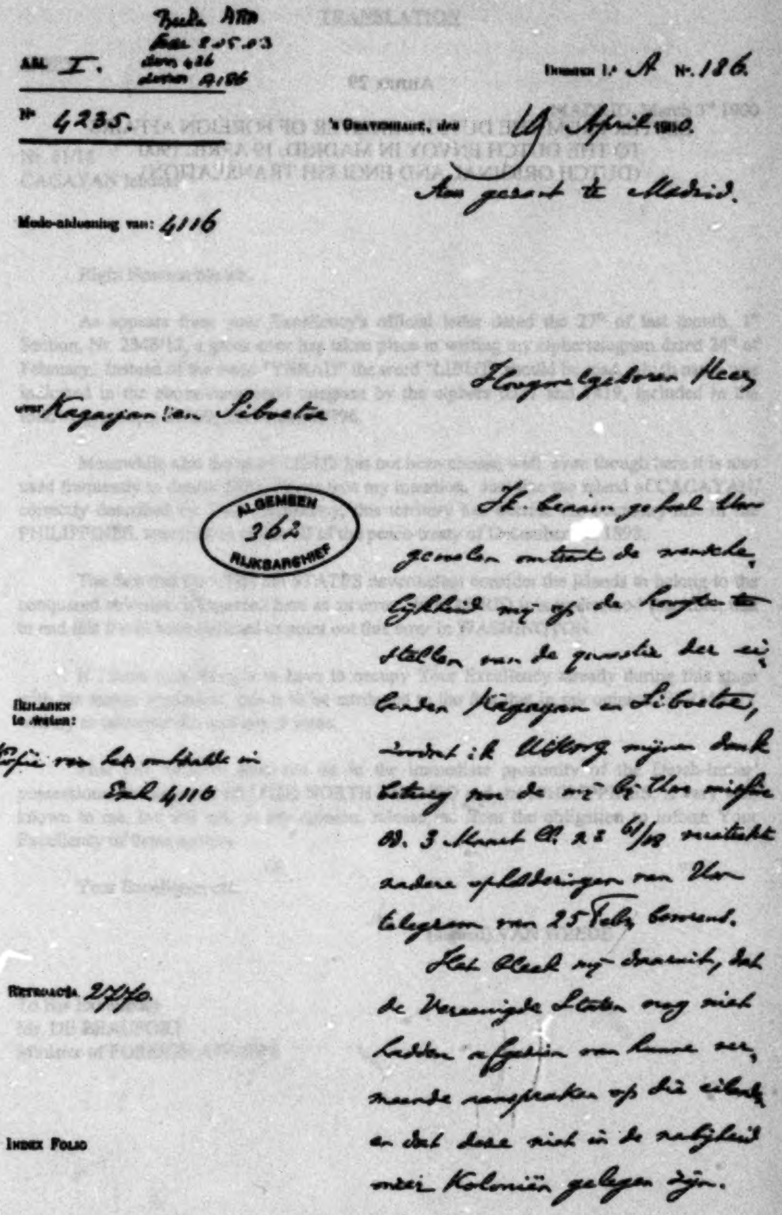
(signed) VAN WEEDE

To His Excellency
Mr. DE BEAUFORT
Minister of FOREIGN AFFAIRS

Annex 29

LETTER FROM THE DUTCH MINISTER OF FOREIGN AFFAIRS TO THE DUTCH ENVOY IN MADRID, 19 APRIL 1900 (DUTCH ORIGINAL AND ENGLISH TRANSLATION)





Buza AD
Toeg. 2.05.03
doos 426
dossier A186

Afd. I.

Dossier 1.e A No. 186.

No 4235.

's Gravenhage, den 19 April 1910.

Aan gezant te Madrid.

Mede-afdeeling van: 4116

Hoogwelgeboren Heer,

inz. Kagayan en Siboetoe

ALGEMEEN 362 RIJKSARCHIEF

Ik kan in geheel Uwer gevoelen omtrent de wenschelijkheid mij op de hoogte te stellen van de quaestie der eilanden Kagayan en Siboetoe, zoodat ik tevens mijnen dank betuig voor de mij bij Uwe missive dd. 3 Maart Cl. 2e 61/18 verstrekte nadere ophelderingen van Uw telegram van 25 Febr. bevorens.

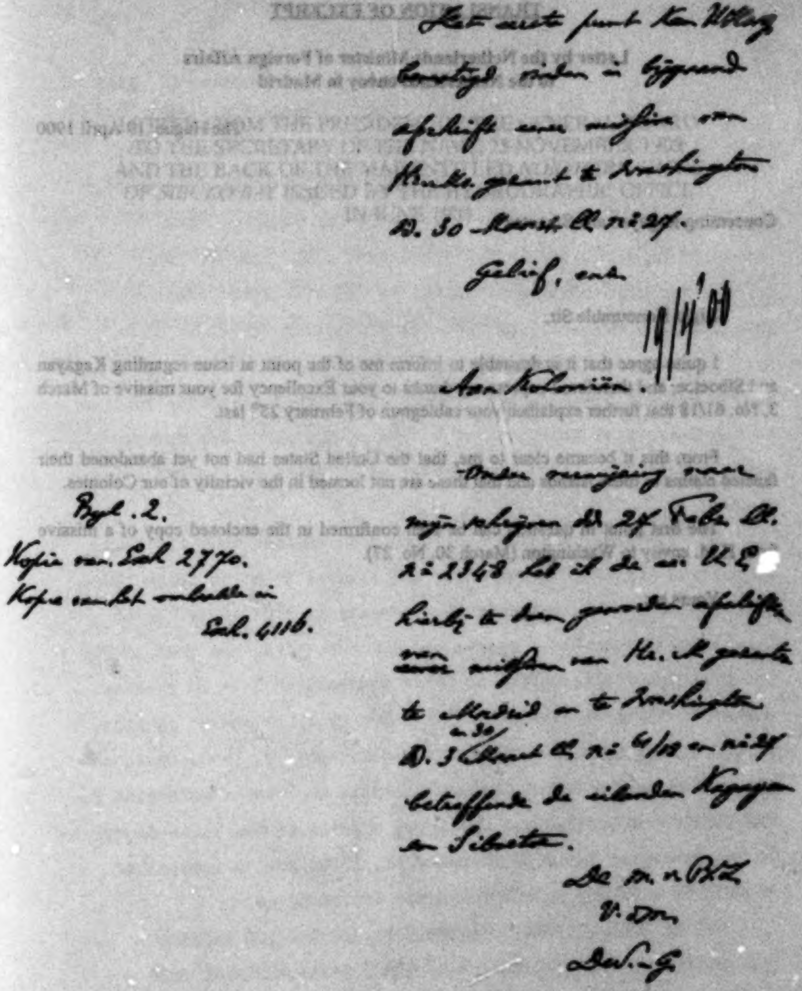
Het bleek mij evenwel, dat de Vereenigde Staten nog niet hadden afgezien van hunne vermeende aanspraken op die eilanden en dat deze vlak in de nabijheid onzer Koloniën gelegen zijn.

Bijlagen te zenden:

Kopie van het ontbrekende in Doss. 4116

Retroacta 2770.

Index Folio



Het eerste punt kan thans
bevestigd worden in bijgaand
afschrift eener missive van
H.M. gezant te Washington
dd. 30 Maart ll. no 27.

Gelieve, enz.

19/4'00

Aan Koloniën.

Onder verwijzing naar
mijn schrijven dd. 24 Febr. ll.
no 2348 heb ik de eer U.E.
hierbij te doen geworden afschriften
van ~~eener~~ missiven van H.M. gezanten
te Madrid en te Washington
dd. 3 en 30 Maart ll. no 61/18 en no 27
betreffende de eilanden Kagayan
en Sibutu.

De M. v. B.Z.
v. Dm
De W.-G.

Bijl. 2.
Kopie van Lit. 2770.
Kopie van het ontvalle in
Lit. 4116.

TRANSLATION OF EXCERPT

Letter by the Netherlands Minister of Foreign Affairs
to the Netherlands envoy in Madrid

The Hague, 19 April 1900

Concerning Kagayan and Siboetoe

Right Honourable Sir,

I quite agree that it is desirable to inform me of the point at issue regarding Kagayan and Siboetoe, and therefore I express my thanks to your Excellency for your missive of March 3, No. 61/18 that further explained your cablegram of February 25th last.

From this it became clear to me, that the United States had not yet abandoned their fancied claims to these islands and that these are not located in the vicinity of our Colonies.

The first point in question can be seen confirmed in the enclosed copy of a missive from H.M. envoy to Washington (March 30, No. 27).

Yours etc.

Annex 30

LETTER FROM THE PRESIDENT OF THE GENERAL BOARD TO THE SECRETARY OF THE NAVY, 25 NOVEMBER 1903 AND THE BACK OF THE MAP ENTITLED *NORTHERN SHORE OF SIBUKO BAY* ISSUED BY THE HYDROGRAPHIC OFFICE IN JUNE 1903

G.B. No. 424. CBW.

November 25, 1903.

Sir:-

1. In obedience to the 2nd endorsement (No. 15626-5 of July 30, 1903) upon the Department's letter G. B. No. 326 (15626-3) of April 16, 1903, the General Board has the honor to call the Department's attention to a letter dated October 23rd from the Secretary of State to the Acting Secretary of War, of which the Department received a copy and referred it to the General Board on the 5th instant. This virtually replies to the request of the Chief of Bureau of Equipment for approval of the boundary line as proposed to be drawn on the new charts.

2. The General Board accordingly recommends that the line be omitted from the charts until the receipt from the State Department of a description of the boundary as eventually agreed upon between the United States and Great Britain, and that in the meantime, as the Secretary of State suggests, a note be printed, either in the general legend of the map or in brackets, in situ, to the effect that by a Treaty signed November 7, 1900, Spain relinquished to the United States all title to islands belonging to the Philippine Archipelago and lying outside of the lines described in the Treaty of Peace of December 10, 1898; and in particular to Cagayan Sulu and Sibutu and their dependencies.

3. In [illegible], the General [illegible] [illegible] to [illegible] of [illegible] small islands, [illegible] [illegible] [illegible] in [illegible] and [illegible], as [illegible]

G.B. No.424.

-2.

NAVY DEPT
Navy Department
Hydrographic Office
Received DEC

indao, which is virtually part of Sibutu, -- are of any eat value in themselves. The interests of the United States ld not suffer if they should be resigned or ceded to the vernment of British North Borneo. The danger to the interests the United States would lie in any third power acquiring foothold between the possessions of British North Borneo nd the possessions of the United States in the Sulu Archipelago.

Very respectfully.

Admiral of the Navy,
President, General Board.

The Secretary of the Navy.

RG-37
ARCHIVES SECTION
563.49 1838-1908
Sheet 1

COPY
from
THE NATIONAL ARCHIVES
Record Group No. ____

16726
5
NAVY DEP'T'
[illegible]
Rec'd JUL 30
1903

956
22
BUREAU OF NAVIGATION.
Rec'd JUL 31
NAVY DEPARTMENT.
[illegible]

424
GENERAL BOARD.
Navy Department.
RECEIVED 1 Aug. 1903

Ez.
Hyrdographic Office
Received DEC. 7
1903

~~Confidential~~

DECLASSIFIED per authorities in NNS
Project 76-5. Date [illegible] by [illegible], NARS

562-17

563.49

1

Annex 31

AFFIDAVIT OF MR. PARAGGAM, 6 FEBRUARY 2000 (INDONESIAN ORIGINAL AND ENGLISH TRANSLATION)

Nomor K.T.P. : 07.2004/183/01/1995
Nama : Paraggam
Jenis Kelamin : Laki-laki
Tempat/Tanggal Lahir : Pulau Derawan, 1925
Pekerjaan : Nelayan
Alamat : Pulau Derawan, Rt/Rw IV
Kelurahan/Desa Pulau Derawan
Kecamatan Pulau Derawan
Kabupaten Dati-II Berau, Kalimantan Timur.

Saya adalah warga negara Indonesia, Suku Bajau kelahiran Pulau Derawan yang selama ini bekerja sebagai nelayan. Saya selalu menangkap ikan di sekitar Pulau Derawan, Pulau Sipadan dan sekitarnya.

Bahasa daerah saya adalah bahasa Bajau yang sama dengan bahasa Bajau di Sampurna, Sabah, Malaysia, juga bahasa Bajau di Filipina. Yang beda hanya pada dialek. Bahasa Bajau yang saya pakai sangat berbeda dengan bahasa Bajau di Sulawesi yang saya tidak mengerti.

Sekitar awal tahun 1960-an saya pernah diminta oleh keluarga saya (Haji Abdul Hamid, warga Suku Bajau dari Sampurna) untuk menjaga telur penyu di Pulau Sipadan, dan saya tinggal di Pulau Sipadan selama dua bulan. Selama tingal di Pulau Sipadan saya tidak pernah mendapat gangguan dari siapapun, aparat keamanan Indonesia dan Malaysia.

Tarakan, 6 Februari 2000

Par[illegible]

TRANSLATION OF AFFIDAVIT

Id. Number : 07.2004/183/01/1995
Name : Paraggam
Sex : Male
Place/Date of birth : Derawan island, 1925
Occupation : Fisherman
Address : Derawan Island, Rt/Rw IV
Kelurahan/Desa Pulau Derawan
Kecamatan Pulau Derawan
Kabupaten Dati-II Berau, Kalimantan Timur.

I am an Indonesian citizen, a Bajau Tribe and was born in Derawan Island and am a fisherman. I used to fish in the area of Derawan Island, Sipadan Island and their surroundings.

My native language is a Bajauan, the same with the Bajau language in Sampurna, Sabah, Malaysia, and with the Bajau language in the Philippines. The only difference is in the dialect. But the Bajau language I am using in Derawan Island is totally different from that in Sulawesi of which I do not understand.

Circa 1960's I was asked by my relative, Haji Abdul Hamid, a Bajau Tribe from Sampurna, Malaysia to look after turtle eggs at Sipadan Island, where I stayed for two months. During my stay on the island I have never faced any problems from anybody, either Indonesian or Malaysian patrol.

Tarakan, 6 February 200

(thumb print)

Paraggam

Annex 32

LIST OF SHIPS OF THE ROYAL NETHERLANDS NAVY PRESENT OFF THE COAST OF NORTHEAST BORNEO DURING THE PERIOD 1895-1928 (SOURCE: *KOLONIALE VERSLAGEN*)

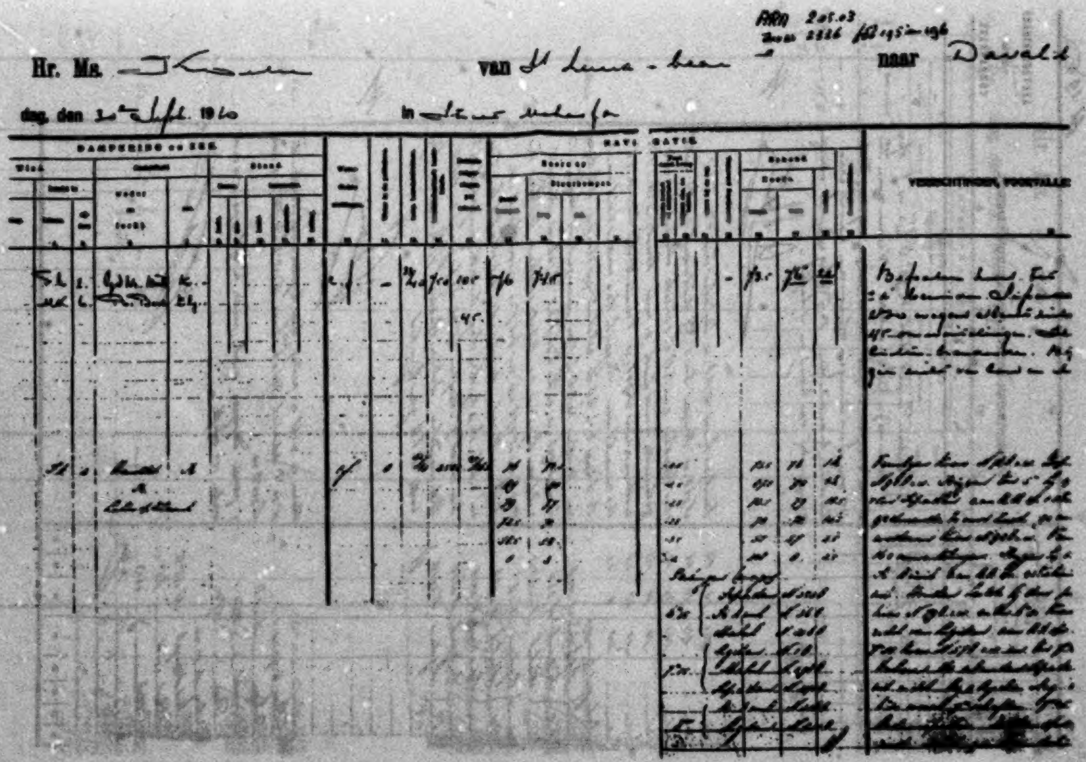
List of ships of the Royal Netherlands Navy present off the coast of Northeast Borneo during the period 1895-1928

source: *Koloniale Verslagen*
(Reports on the Colonies, submitted annually to Parliament by the Dutch Government)

HNLMS *Soembing*	1895-1902
Flores	1902-1905
Koningin Regentes	1910
Serdang	1910
Koetei	1910
Holland	1910-1911
Asahan	1912
Koetei	1915-1916
De Zeven Provincien	1916
Bulhond	1916
Jakhals	1916
Lynx	1916
De Ruyter	1916
Fret	1916
Hermelijn	1916
Panther	1916
Vos	1916
Lynx	1921
Koetei	1921-1922
Flores	1924
De Zeven Provincien	1924
Hermelijn	1924
Assahan	1924
Bulhond	1924
Krakatau	1927
Wega	1927
Java	1928
Lynx	1928
Panter	1928
Sumatra	1928

Annex 33

EXTRACT FROM THE LOG-BOOK OF HNLMS *KOETEI* FOR 30 SEPTEMBER 1910 (DUTCH ORIGINAL AND ENGLISH TRANSLATION OF EXTRACT)

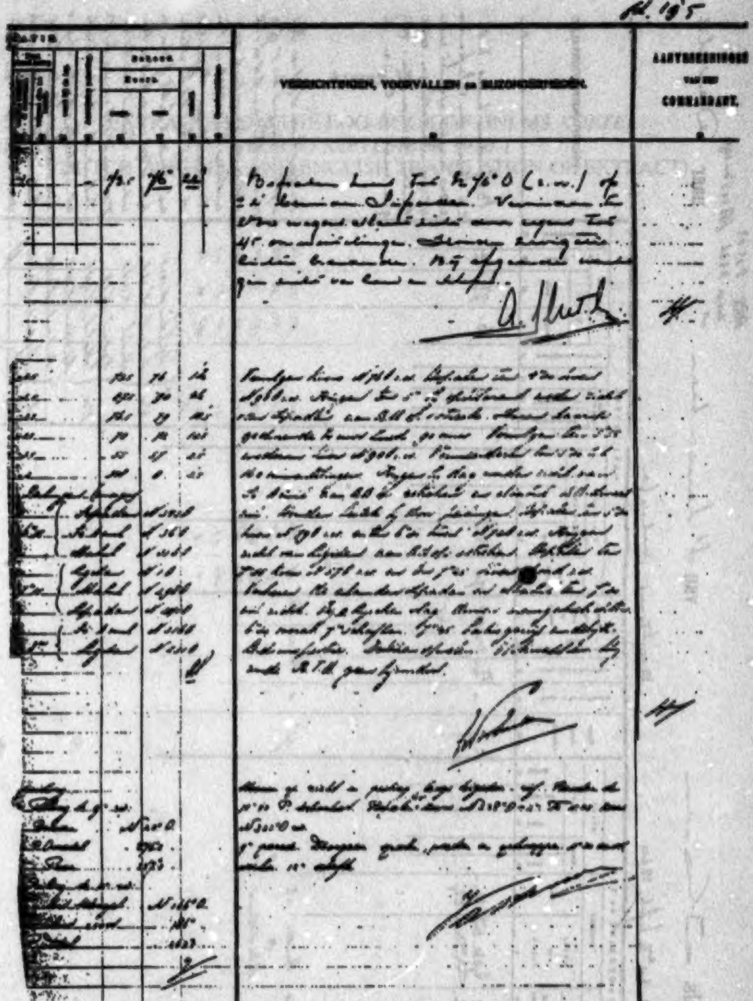


ARA 2.05.03
Inv. 2226 fol. 195-196

Hr. Ms. [illegible] van St Lucia-baai naar Darvel

dag, den 20e Sept. 1910 in Straat Makassar

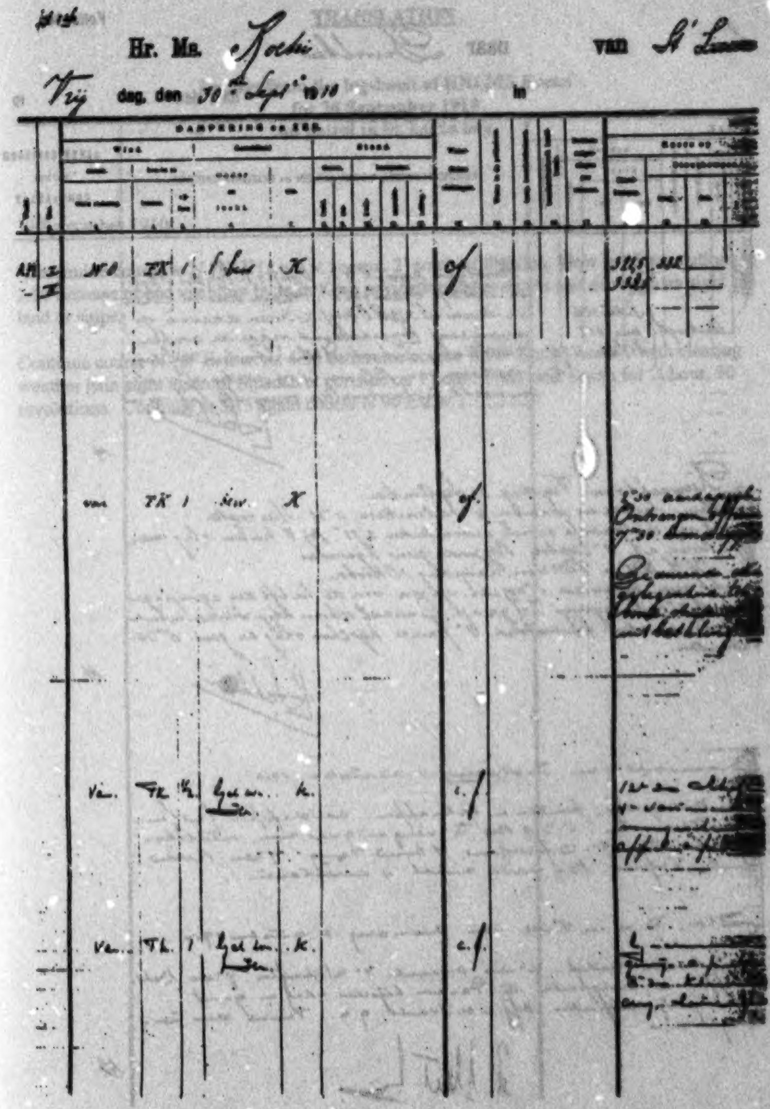
VERRICHTINGEN, VOORVALLEN



fol. 195

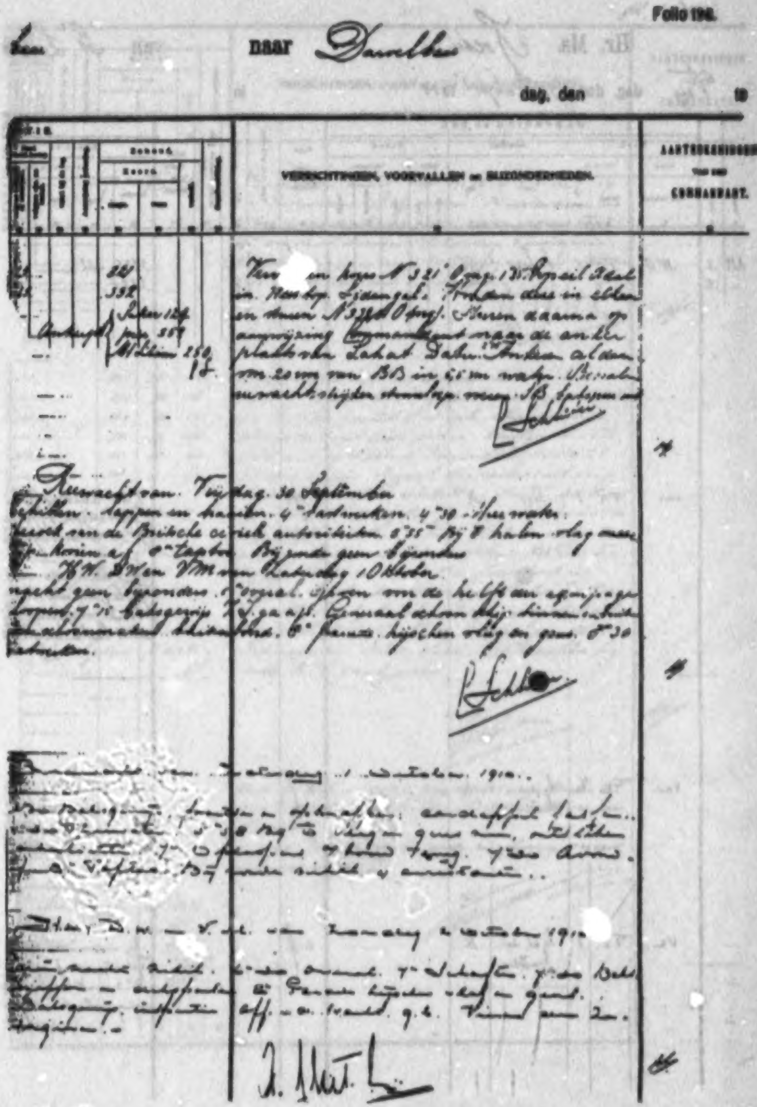
VERRICHTINGEN, VOORVALLEN en BIJZONDERHEDEN.

AANTEEKENINGEN VAN DEN COMMANDANT.



Hr. Ms. Kochi van St. L[illegible]

Vrij dag, den 30e Sept. 1910 in



Folio 198.

naar Darvelbaai

dag, den 19

VERRICHTINGEN, VOORVALLEN en BIJZONDERHEDEN.

AANTEEKENINGEN VAN DEN COMMANDANT.

24 — 338 — Sekan 124 — 357 — Anker — 250 — 18

Ver[illegible] en koers N 321° O[illegible]. 1 30 [illegible] in. [illegible]. [illegible] in [illegible] N 3[illegible] O[illegible]. [illegible] naar de ankerplaats van Lahat Datu. Ankeren [illegible] 20 m van BB in 6,5 m water. [illegible] ruwachtsleiden [illegible]

Ruwacht van Vrijdag 30 September
Schikken. [illegible] en [illegible]. 4u [illegible]. 4u30 [illegible] water. [illegible] van de Britsche civiele autoriteiten 8u35. Bij 8 halen vlag [illegible] af 8u taptoe. Bijzonder geen bijzonder
H.W. D.W. en V.M. van Zaterdag 1 October
nacht geen bijzonders. 6u [illegible] ophalen van de helft [illegible] 7u15 [illegible] Generaal [illegible] 6u [illegible] hijschen vlag en [illegible] 8u30 [illegible]

[illegible] van Zaterdag 1 October 1910.

[illegible]

[illegible] D.W. en V.M. van Zondag 2 October 1910

[illegible]

TRANSLATION

Extract from the log-book of HNLMS *Koetei*
for 30 September 1910
on patrol in St. Lucia bay

30 September 1910:

"Determine course to N 76° E (z.w.) at approx. 2' south of Sipadan. Slow to 45 revolutions at 2.30 because of bad visibility by rain. Keep navigation lights on. At end of watch no sight of land or ships.

Continue course N 76° E. z.w. At 4.30 determine course N 90° E z.w. At 5.00 with clearing weather gain sight again of Sipadan at portside on 1 point. Then steer South for ¼ hour, 90 revolutions. Continue at 5.15 again course N 90 E z.w. (………)"

Annex 34

DAVID, H., "TENSIONS WITHIN ASEAN-MALAYSIA AND ITS NEIGHBOURS", IN *MONOGRAPHS ON SOUTH-EAST ASIAN POLITICS AND INTERNATIONAL RELATIONS* NO. 1, CHAPTER 5, PP. 64-78, DEPARTMENT OF SOUTH-EAST ASIAN STUDIES, UNIVERSITY OF HULL, 1996

Tensions within ASEAN

MALAYSIA AND ITS NEIGHBOURS

Harald David

MONOGRAPHS ON SOUTH-EAST ASIAN POLITICS
AND INTERNATIONAL RELATIONS NO. 1
Department of South-East Asian Studies
University of Hull
Hull HU6 7RX
1996

ISBN 0-85958-908-0

5 RELATIONS BETWEEN INDONESIA AND MALAYSIA

Since the late 1980s, several issues have damaged relations between Kuala Lumpur and Jakarta. The Malaysian prime minister, Dr Mahathir, and Indonesia's President Suharto compete for intellectual leadership of ASEAN, often finding themselves at cross-purposes. The repression of an armed rebellion in Indonesia's Aceh province has triggered a small flow of refugees to Malaysia and has become a bilateral issue of some importance. After a period of calm since the mid-1980s, the territorial dispute over Sipadan and Ligitan, two islands off the northeast coast of Borneo, has flared up again. These developments have affected the triangular relationship between Malaysia, Indonesia and Singapore, leading to the deterioration of relations between Kuala Lumpur and Jakarta, and an improvement in those between Jakarta and Singapore.

Bilateral Problems: a Question of Style?

Indonesia tends to see itself as the leading nation in ASEAN if not the whole of Southeast Asia. Any explicit claim by the Indonesian government to the leading position within ASEAN and the wider region, however, would inevitably have evoked memories of the Sukarno era and provoked strong disapproval of a new Indonesian 'big brotherism'[1] among neighbouring countries. Thus, the Suharto government has always refrained from openly insisting on such a leading position and has tried instead to follow a policy of low-key diplomacy to lend credence to its claim. Since the late 1980s, Jakarta has pursued a more active and assertive foreign policy. Three elements seem to be largely responsible for this development. Firstly, in the early and mid-1980s, the collapse of oil prices sent Indonesia's export revenues into free fall, but after this period of crisis the economy fully recovered and continued to grow rapidly, boosting the confidence of the Indonesian government.[2] Secondly, being on comparatively friendly terms with Vietnam, the need to find a diplomatic solution to the Cambodian conflict placed Indonesia in the role of regional mediator, and gave rise to the Jakarta Informal Meetings. The role it played in trying to find a solution to the Cambodian issue further boosted the self-confidence of the Indonesian government and encouraged it to offer itself as an intermediary for the Spratly problem.[3] Thirdly, although Suharto's role in formulating his country's foreign policy has undoubtedly been as pivotal as in domestic matters, it is only recently that the President has developed a taste for an international high profile. In September 1989, for the first time in 19 years, Suharto attended a meeting of the Non-Aligned Movement, where he was praised for his country's stability instead of being attacked for his anti-communism as in 1970. A series of trips abroad followed.[4] In September 1991 Indonesia was chosen to lead the Non-Aligned Movement,[5] and in 1992 it hosted the meeting of the Non-Aligned heads of governments. The Bogor summit meeting of the APEC group in November 1994 was another sign of Suharto's more active foreign policy. Suharto seems to have been attempting to use a more assertive foreign policy, together with increasing emphasis on his Muslim credentials and criticism of the economic predominance of Indonesia's Chinese community, to counter the gradual erosion, particularly within the armed forces, of his domestic support.[6] Jakarta's higher international profile, however, has sometimes clashed with Kuala Lumpur's similarly more assertive foreign policy.

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[1] Zakaria Haji Ahmed, 'Malaysian Foreign Policy and Domestic Politics: Looking Outward and Moving Inward?', in: Scalapino, Robert A. (Ed.), *Asia and the Major Powers: Domestic Politics and Foreign Policy*, Berkeley 1988, pp.256-279, p.263. See also Vatikiotis, Michael R.J. (1993), 'Indonesia's Foreign Policy in the 1990s', in: *Contemporary Southeast Asia*, Vol.14, No.4, March 1993, pp.352-367, p.361.

[2] See Vatikiotis (1993), p.354. Average annual growth of Indonesia's GDP between 1965-80 was 7.9%, but shrank to 3.5% between 1980-1986 (see Tyabji, p.35). In 1991 the GDP grew by 6.8% (see *Asia Yearbook 1993*, pp.6/7). Revenues from oil and gas exports declined dramatically from US-$ 20.8 billion in 1981 to US-$ 6.6 billion in 1988 (see Rigg, p.170).

Dr Mzhathir, Malaysia's prime minister since 1981, has increasingly challenged Indonesia's leading role within ASEAN. However, Dr Mahathir's somewhat aggressive foreign policy - 'the big noise in the East'[7] - has not been received enthusiastically within ASEAN or the wider East Asian region. His political initiatives and verbal attacks on the western industrialized nations do not necessarily correspond with the views of other regional states, which tend to see Malaysia's government as having an exaggerated sense of its own importance.[8] The differences are particularly evident in the relationship between Kuala Lumpur and Jakarta, where there has been a 'clash of styles'.[9]

---

[3] See Vatikiotis (1993), p.354; FEER, 16.1.1992, p.26.

[4] See Vatikiotis (1993), pp.354/355; Vatikiotis, Michael R.J. (1994), *Indonesian Politics Under Suharto*, New York 1994, p.183; FEER, 16.1.1992, p.24.

[5] See FEER, 16.1.1992, p.26.

[6] See Vatikiotis (1994), pp.157-160, 181/182, 184, 189.

[7] *The Independent on Sunday*, 5.12.1993.

[8] See *FT*, *Survey Malaysia*, 31.8.1993, p.1.

[9] FEER, 20.8.1992, p 19.

In a speech in December 1990, Dr Mahathir proposed the formation of an East Asia Economic Group (EAEG), without having first consulted the other ASEAN states.[10] The suggested EAEG was to include ASEAN's members, the Indochinese states, Japan, South Korea, China, Taiwan and Hong Kong, thus forming an East Asian trade bloc against the European Union and the projected North American Free Trade Area. Despite a public relations offensive by the Malaysian government, the potential members of the EAEG initially either flatly rejected the idea or remained indifferent to it. This general lack of enthusiasm forced Dr Mahathir to reconsider and reconceptualize the grouping. The idea of a trade bloc was dropped and the EAEG was henceforth presented as a group which would be committed to free trade and would aim at giving the East and Southeast Asian nations more weight within the General Agreement on Tariffs and Trade (World Trade Organisation).[11] Nevertheless, regional reactions remained mostly negative or indifferent.

Two elements were decisive in the general rejection of the Malaysian initiative. On the one hand, the export-oriented East and Southeast Asian states were not interested in joining a grouping which explicitly excluded the USA, one of the major trading partners of all potential EAEG members. Given American hostility to the proposal in addition to pre-existing economic problems between Washington and Tokyo, it is not surprising that the Japanese government did not consider the EAEG to be viable.[12] Moreover, Malaysia's solo initiative provoked considerable irritation among the other ASEAN states and in particular Indonesia, and Kuala Lumpur's dogged persistence with the EAEG project did nothing to ease the situation. Jakarta was extremely indignant about not having been consulted by Dr Mahathir at an early stage. From the Indonesian point of view, Malaysia had not only acted against ASEAN's consensus principle, but had simultaneously disregarded Suharto's position as the organisation's senior leader and Indonesia's implicit claim to ASEAN leadership.

The basis of Jakarta's objection was not the substance of the Malaysian proposal (Indonesia floated a similar idea in 1984, whereupon Malaysia argued it was premature), but centred on Mahathir's failure to consult Soeharto as the senior leader in ASEAN.[13]

---

[10] '*Malaysia does not want to see the emergence of economic blocs, but the reality is that many Western countries have jointly organised all kinds of economic blocs and are using the strength of these blocs to interfere with fair and free trade. In view of this situation, we have reexamined our position and we are aware that if the whole world is to have a balanced economic development, various countries in the Asia-Pacific region must strengthen the economic and market ties among them, thereby organising their own economic bloc to counter other economic blocs. To ensure fair trade in the world, Malaysia holds that China should play an important role in organising this bloc.*' *SWB*, 12.12.1990, p.A3/2.

[11] See Pretzell, Klaus-A. (1991), 'Der Ostasiatische Wirtschaftstag (EAEC)', in: *SOAa*, November 1991, pp.590-593.

[12] See Pretzell (1991), p.591; *FEER*, 9.5.1991, p.19.

A privately organized seminar, held under the title 'ASEAN and the World Economy: Challenge of Change' on Bali in March 1991, further deepened the Indonesian-Malaysian rift. Avoiding any allusion to the EAEG idea, Suharto's opening speech left no doubt about either his opposition to any sort of trade bloc or his support for increased cooperation among the ASEAN states. In his contribution, however, Dr Mahathir defended the meanwhile reformulated EAEG concept.[14] In October 1991, ASEAN's Economic Ministers agreed to propose the formation of an East Asian Economic Caucus (EAEC) which, in contrast to the EAEG, would not be an institutionalised organisation but rather an informal forum whose members would meet 'as and when the need arises'.[15] Having reacted rather unenthusiastically to this compromise proposal,[16] Jakarta was the driving force behind the decision of the ASEAN leaders, at their fourth summit meeting in Singapore in January 1992, to refer the EAEC project to a committee for further revision. However, the Indonesian government could not prevent the EAEC from being mentioned in the final summit declaration.[17] In early 1995, the EAEC had not yet been established.

The decision in principle to establish an EAEC gave rise to the question of how to define its position in relation to APEC. On this issue, Indonesia and Malaysia again disagreed.

Owing to the participation of western industrial nations, the ASEAN states have certain reservations about the group, which in their eyes could easily become another instrument for the assertion of the interests of the industrialised countries, in particular the USA.[18] The most pronounced critic of APEC has been Dr Mahathir, who was never enthusiastic about ASEAN's decision to join APEC and has since warned against APEC being dominated by the industrialised states.[19] The decision to establish a permanent APEC secretariat in Singapore as well as US President Clinton's invitation to APEC heads of government to attend a summit in Seattle in November 1993 confirmed Dr Mahathir's misgivings:

---

[13] Vatikiotis (1993), pp.360/361. See also Pretzell (1991), p.591; Kurus, pp.409/410; *BPWR*, 22.3.1991, p.18; *FEER*, 16.1.1992, p.26; 20.8.1992, p.19; 29.7.1993, p.19.

[14] See *FEER*, 21.3.1991, pp.18/19; *BPWR*, 22.3.1991, p.18; Pretzell (1991), pp.590/591.

[15] Quoted in: Antolik, Michael, 'ASEAN's Singapore Rendezvous: Just Another Summit?', in: *Contemporary Southeast Asia*, Vol.14, No.2, September 1992, pp.142-153, p.146. See Pretzell (1991), p.590; *NST*, 9.10.1991.

[16] See Antolik, p.146.

[17] See *FEER*, 6.2.1992, pp.10/11. The 'Singapore Declaration' says: '*With respect to an EAEC ASEAN recognises that consultations on issues of common concern among East Asian economies, as and when the need arises, could contribute to expanding cooperation among the region's economies, and the promotion of an open and free global trading system.*' (Text in *SOAs*, March 1992, pp.194-201, p.197.)

[18] See *Asian Security 1990/1991*, pp.156/157; *FEER*, 20.7.1989, pp.10/11.

[19] See for example *BPWR*, 11.9.1992, p.14; *FEER*, 2.12.1993, p.13.

> We were worried that APEC would be manipulated by the big powers. Today it has been proven that it is in fact being manipulated. When it was formed, there was no mention of a secretariat. Now there is one. Now they are also talking of a summit meeting. It is now quite clear what their intention was from the start - to have a trade grouping for the interest of the economically strong countries and not the weaker ones.[20]

His reservations about APEC, and the American rejection of his EAEC concept, were reasons enough for him to boycott the Seattle summit.[21]

Dr Mahathir wanted the EAEC to be established as a forum independent of APEC so as to prevent the USA (in particular) from gaining undue influence. Although sharing Malaysian reservations about APEC,[22] Jakarta preferred the EAEC to be embodied within this wider organisation, for the Indonesian government assumed that this would make it easier for Japan and South Korea to join the EAEC and at the same time reduce the American hostility against the grouping.[23] In July 1993 the ASEAN states agreed on a compromise solution, put forward by Singapore's foreign minister, which proposed the establishment of the EAEC under the leadership of the ASEAN economic ministers within APEC.[24] Official Malaysian comments made it plain, however, that as far as Kuala Lumpur was concerned this was not yet the end of the matter.[25]

The September 1992 meeting of the Non-Aligned heads of government in Jakarta revealed once again the differences between Dr Mahathir and Suharto. The Indonesian president, who at that time was chairman of the Non-Aligned Movement, tried to use the meeting for initiating a constructive dialogue with the industrialised nations about economic development. Dr Mahathir, however, yet again attacked the Western states, denouncing their policy towards the developing nations as 'a revival of the old Western colonialism'.[26] Malaysia and Indonesia found themselves once more in opposing camps in relation to the problem of the former Yugoslavia, for Indonesia rejected Dr Mahathir's proposal that Serbia and Montenegro be expelled from the Non-Aligned Movement.[27]

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[20] *NST*, 4.8.1993.

[21] Dr Mahathir's decision to boycott the Seattle meeting was apparently yet again taken without any prior consultation of the other ASEAN members. A statement by Indonesia's Foreign Minister to the effect '*that all ASEAN countries should be cohesive during the forthcoming APEC summit*' (*SWB*, 11.11.1993, p.B/7), may have been directed at Kuala Lumpur.

[22] See *BPWR*, 3.7.1992, p.6.

[23] See *FEER*, 6.2.1992, pp.10/11; 29.7.1993, p.19; 5.8.1993, p.11; *NST*, 18.7.1993.

[24] See *FEER*, 5.8.1993, p.11. Reactions to this compromise differed sharply. While the UMNO-owned *New Straits Times* spoke of '*historic consensus*', '*victory*' and '*euphoria*' (*NST*, 30.7.1993), the *Financial Times* called the decision '*a messy last minute compromise*' (*FT*, 26.7.1993), and Washington was '*puzzled about how it should work*' (*FEER*, 5.8.1993, p.11).

[25] See *NST*, 29.7.1993; 4.10.1993.

[26] Quoted in *FEER*, 17.9.1992, p.10.

Although a visit by Suharto to Malaysia in July 1993 apparently facilitated progress on a number of bilateral issues, the principal differences remain.[28]

Aceh

Having once been one of the most important Sultanates and trading empires of Southeast Asia, Aceh (which covers the eastern tip of Sumatra and has 3.4 million inhabitants) is today 'the most staunchly Islamic province in Indonesia'.[29] The Netherlands' attempt to incorporate Aceh in its colonial empire began in 1873 and led to a guerilla war lasting more than thirty years. After Indonesia became an independent state, resistance to rule from Jakarta culminated in open rebellions by the Darul Islam movement (1953-1959) and Aceh Merdeka (1976-1980). In 1989, a new revolt by Aceh Merdeka broke out and was largely suppressed by some 5000 Indonesian troops. However, the rebellion continued to smolder into the mid-1990s.[30] Reports about Aceh are scarce and usually do not make headlines in the international press. As a result, little attention has been paid to the rebellion's detrimental effects on the Indonesian-Malaysian relationship, in which Aceh has become 'an extremely sensitive issue'.[31]

The leadership of Aceh Merdeka seems to be based in Malaysia, which serves as the movement's sanctuary from which weapons and guerillas are channelled to Aceh. In official statements Aceh Merdeka regularly refers to members in Malaysia, and Malaysian ID-cards found on killed insurgents confirm the contacts between the resistance movement and Malaysia.[32] A possible link is the sizeable Acehnese community in Malaysia, which dates back to the last century when many Acehnese emigrated to Penang and Kedah. In addition, the Indonesian authorities keep a close eye on, and sometimes ban, the activities of Malaysian *dakwah* (Muslim missionary) movements.[33] Although Indonesia has not accused Kuala Lumpur of overt support for the insurrection, Jakarta has condemned the Malaysian position towards the resistance movement as 'too accommodating'.[34]

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[27] See *FEER*, 17.9.1992, pp.10/11; *STWOE*, 24.7.1993, p.10; *Asiaweek*, 30.10.1992, p.36.

[28] It was agreed not to internationalise the dispute over Sipadan and Ligitan, to step up bilateral investment, and to set up a joint venture to build and sell Malaysia's Proton cars in Indonesia. See *FEER*, 29.7.1993, pp.18/19.

[29] *FEER*, 25.7.1991, p.20. See map 10.

[30] See Amnesty International (Ed.)(1993b), *Indonesia: 'Shock Therapy' - Restoring Order in Aceh 1989-1993*, London 1993, pp.3-5; *FEER*, 25.7.1991, p.20. For a detailed account of the rebellion and its roots see Kell, Tim, *The Roots of the Acehnese Rebellion 1989-1992*, Ithaca 1995

[31] Acharya (1993), p.28.

[32] See *FEER*, 24.1.1991, p.20; 25.7.1991, p.22.

[33] See *FEER*, 24.1.1991, pp 20/21.

The first refugees from the recent conflict in Aceh started to arrive on the northeastern coast of Malaysia in March 1991[35] and were immediately detained by the Malaysian authorities. Denying any political motivation on the part of the refugees,[36] Jakarta requested their extradition. The Malaysian government, however, initially ignored the request. In mid-April 1991, Kuala Lumpur apparently still intended to send diplomats to Aceh to get first-hand information about the local situation, and to decide on the refugees' status in cooperation with the United Nations High Commissioner for Refugees (UNHCR).[37] Only two weeks later, however, Kuala Lumpur made an astonishing turnabout. The deputy foreign minister explicitly distanced himself from all secessionist movements in any state with which Malaysia enjoyed good bilateral relations, adding with respect to the Indonesian 'boat people':

> We do not recognise their plea for political asylum and have decided to deport them. The Indonesian authorities have also assured us that these people would not be harassed unnecessarily when they return to their country.[38]

This change in Kuala Lumpur's position was almost certainly due to pressure from Jakarta, for the deputy foreign minister explained that 'the Indonesian authorities had also requested Malaysia not to get involved in its internal affairs'.[39] This is a very strong statement indeed and indicated Jakarta's uneasiness about the stream of refugees landing in Malaysia. Nevertheless, the Malaysian government hesitated before executing its new policy. Kuala Lumpur granted the Indonesian authorities free access to the refugees and simultaneously refused such access to the UNHCR,[40] but only 10 of them had been repatriated by October 1991.[41] The problem of the Acehnese boat people was one of the topics discussed during a meeting of the Indonesian-Malaysian Joint Commission in October 1991,[42] but evidently to no avail. Although some of the refugees seem to have been 'convinced', or simply forced, to return to Indonesia,[43] Kuala Lumpur's initially hesitant attitude had by then already roused considerable irritation in Jakarta.[44] Two Indonesian 'persuasion teams' visited the refugees in Malaysia in 1993, and a third was projected for late 1994. According to the Malaysian *New Straits Times*, there were still 'hundreds of Acehnese' in Malaysia in June 1994, while 160 had 'voluntarily' returned to Indonesia.[45]

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[34] *FEER*, 25.7.1991, p.20.

[35] There are no exact figures. According to the *New Straits Times*, about 200 refugees came to Malaysia in April 1991 (see *NST*, 11.10.1991), while the *Far Eastern Economic Review* puts the number at 109 (see *FEER*, 25.7.1991, p.19). The *Tapol Bulletin* (hereafter *TB*) claimes the total number of Acehnese refugees in Malaysia to have reached 113 in June 1991 (see *TB*, June 1991, p.2), over 300 in July 1991 (see *TB*, August 1991, p.16), 300-500 in February 1992 (see *TB*, February 1992, p.20) and more than 2,000 in October 1992 (see *TB*, October 1992, p.18), although the context in which this last figure is quoted is not quite clear. According to Amnesty International the refugees in Malaysia numbered at least 200 in 1991 und 1992 (see Amnesty International (Ed.)(1992), *Report 1992*, London 1992, p.180; Amnesty International (Ed.)(1993a), *Report 1993*, London 1993, pp.200/201). The Indonesian military spoke of 261 refugees in 1991. According to Aceh Merdeka, in September 1992 there were 300 Acehnese in Malaysian detention, while 300 more had already been repatriated (see Amnesty International (Ed.)(1993b), p.53 note 61).

[36] See *FEER*, 18.4.1991, p.17. However, the Indonesian regional military commander later said that about half of the refugees were members of Aceh Merdeka (see *FEER*, 25.7.1991, p.20).

[37] See *NST*, 9.4.1991; 10.4.1991.

[38] *NST*, 23.4.1991.

[39] *NST*, 23.4.1991.

[40] See Amnesty International (Ed.)(1993b), pp.53-55; *TB*, June 1991, p.2; August 1991, p.16; October 1991, pp.2/3; February 1992, p.20; August 1992, p.20.

The Indonesian-Malaysian relationship was further embarrassed in June 1992, when 43 Acehnese refugees gained access to the compound of the UNHCR residence in Kuala Lumpur. They were still there in May 1994.[46]

The problem of Aceh in general, and of the refugees in Malaysia in particular, seems likely to continue to damage relations between Kuala Lumpur and Jakarta as long as the conflict persists. It remains to be seen to what extent the projected 'growth triangle' involving northern Sumatra, the Malaysian state of Penang and the southern Thai provinces will influence the independence movements of the Acehnese on the one hand and the Muslim Malays in southern Thailand on the other hand. Increasing cross-border cooperation will necessarily be accompanied by an intensification of contacts among the people on both sides of the borders. These contacts, however, could foster centrifugal forces in Thailand and Indonesia, contravening the centralist policies of Jakarta, Bangkok and Kuala Lumpur.

Sipadan and Ligitan

Indonesia and Malaysia both lay claim to the islands of Sipadan and Ligitan which are situated in the Celebes Sea off the northeastern coast of Sabah. Unable to resolve their differences over the overlapping territorial claims, the two governments decided in 1969 to accept the status quo until a solution acceptable to both sides could be found.[47] The issue was raised again in 1979 when Kuala Lumpur published its map of Malaysia's continental shelf showing both islands as Malaysian territory. In July 1982, Kuala Lumpur occupied Sipadan, and possibly Ligitan as well, but withdrew its troops after a few days.[48] In December 1984, the Malaysian deputy foreign minister announced that the two sides had concurred to negotiate a formal agreement on the issue.[49] The dispute over the islands, which are currently under Malaysian control, then once more vanished into oblivion only to resurface yet again almost another decade later.

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[41] See *NST*, 12.10.1991.

[42] See *NST*, 11.10.1991; 12.10.1991; *SWB*, 11.10.1991, p.A3/4.

[43] See Amnesty International (Ed.)(1993b), pp.53-55; *TB*, February 1992, p.20; August 1992, p.22; October 1992, p.18; June 1993, p.17.

[44] See *FEER*, 25.7.1991, p.20; McKendrick, David, 'Indonesia in 1991: Growth, Privilege, and Rules', in: *Asian Survey*, Vol.32, No.2, February 1992, pp.100-118, p.109; *ADI*, January 1992, p.12; *Asiaweek*, 30.10.1992, p.38.

[45] *NST*, 3.6.1994.

[46] See *NST*, 30.7.1992; 31.7.1992; Amnesty International (Ed.) (1993b), p.53; *TB*, August 1992, p.1; October 1992, p.18; April 1994, p.17.

[47] See *STWOE*, 19.6.1993, p.11.

As in the case of Swallow Reef, Malaysia seems to have gone out of its way to develop Sipadan and Ligitan for tourism in order to underline its claim to the islands.[50] In addition, the Malaysian navy patrols the surrounding waters. In early 1991 Malaysia was criticised in Indonesia for trying to change the status quo of Sipadan and Ligitan, and reports in some Jakarta-based newspapers about the construction of tourist facilities on the islands provoked such 'public emotions against Malaysia'[51] that General Try Sutrisno, then chief of the Indonesian Armed Forces, called on his fellow countrymen not to emotionalize the issue.[52] The Indonesian navy's apprehension of Malaysian fishermen in waters off Sipadan in July 1991 made further headlines.[53] Only the previous month, Jakarta and Kuala Lumpur had again taken up negotiations about the future status of Sipadan and Ligitan.[54] In July 1991, they agreed to set up a joint commission to discuss the issue.[55]

Notwithstanding their mutual assurance of friendly relations, the dispute about the two islands seems to have put considerable strain on the bilateral relationship between Jakarta and Kuala Lumpur. The Indonesian press devotes considerable attention to the issue, taking what is described by the Malaysian side as a 'hawkish stand'[56] and asking President Suharto not to agree to any compromise.[57] So it is not surprising that Kuala Lumpur has frequently referred to the importance of the role of the press in maintaining good bilateral relations, invoking the dangers of 'careless reports'.[58] Concerns having been voiced in Malaysia about Indonesia's military presence in the seas around the disputed islands, Jakarta agreed to scale down the activities of its navy and air force in the area. The Malaysian defence minister provided an insight into the state of the bilateral relationship between Kuala Lumpur and Jakarta when he commented, in January 1992, that 'the recent buildup of

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[48] See Pretzell (1985), p.270; Johnston/Valencia, p.151.

[49] See Pretzell (1985), p.271.

[50] See *FEER*, 20.6.1991, p.20.

[51] *NST*, 8.6.1991.

[52] See *NST*, 8.6.1991.

[53] See *NST*, 26.7.1991.

[54] See *SWB*, 10.6.1991, p.A3/9.

[55] See *NST*, 10.10.1991; *SWB*, 30.7.1991, p.A3/5; 11.10.1991, p.A3/4.

[56] *NST*, 18.7.1993.

[57] See *NST*, 18.7.1993.

[58] *SWB*, 21.4.1992, p.A3/7. See *NST*, 18.7.1993.

Indonesian warships and aircraft around the islands had raised fears of untoward incidents between the two countries'.[59] Nevertheless, the Indonesian armed forces remained present in the area and, according to Malaysian statements, landed on Sipadan several times during 1993.[60] The stakes were raised in September 1994 when a Malaysian joint forces exercise involved the use of the army's recently-established Rapid Deployment Force (RDF) to 'recapture' Langkawi island (north of Penang). Commenting on the exercise, an Indonesian press report alleged that Malaysia was 'preparing to take over Sipadan and Ligitan'.[61] In October 1994, Indonesia staged a large-scale naval exercise involving 40 vessels and almost 7000 troops. In both cases, Malaysia and Indonesia went out of their way to emphasize that the exercises were not related to the dispute over Sipadan and Ligitan,[62] revealing the underlying tension and mistrust in the Indonesian-Malaysian relationship. In February 1995, a parliamentary commission 'urged the Indonesian Government to take a more aggressive approach in resolving the issue'.[63]

Until mid-1994, there was some reason to doubt Malaysia's seriousness in discussing the issue. Despite regular Indonesian protests since 1991 and bilateral negotiations since then, Kuala Lumpur continued to develop the two islands as tourist resorts. Although the Malaysian foreign minister assured Jakarta in October 1991 that no further steps would be taken to develop the two islands and that the status quo would be respected,[64] the Malaysian Defence Ministry only shortly afterwards announced that 'technically, the development could go on'.[65] In October 1993, Jakarta launched another diplomatic protest, this time against the publication of an official Malaysian travel brochure issued on the occasion of the 'Visit Malaysia Year 1994' and referring to Sipadan as a tourist attraction.[66] As far as the Indonesian willingness to compromise is concerned, suffice it to say that so far all proposals for joint development have been flatly refused.[67]

In late 1994, however, the issue took an interesting and unprecedented turn, when Malaysia proposed to refer the dispute over Sipadan and Ligitan to the International Court of Justice (ICJ).[68] Jakarta did not show any enthusiasm for the Malaysian proposal, voicing its preference for a bilateral solution. In the event of a failure of

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[59] *NST*, 31.1.1992. See also *ADJ*, March 1992, p 84.

[60] See *FEER*, 17.3.1994, p.32.

[61] *SWB*, 24.10.1994, p.B/2. See also *NST*, 31.10.1994; *SOAs*, November 1994, p.452.

[62] See *SOAs*, November 1994, p.452; *SWB*, 14.10.1994, p.B/1; 24.10.1994, pp.B/1,2; 1.11.1994, p.B/1; *NST*, 31.10.1994.

[63] *NST*, 17.2.1995.

[64] See *NST*, 12.10.1991.

[65] *NST*, 31.1.1992. See also *ADJ*, March 1992, p.84.

[66] See *SWB*, 2.11.1993, p.B/1.

[67] See *STWOE*, 19.6.1993, p.11.

[68] See *SWB*, 12.9.1994, p.B/2; 17.9.1994, p.B/2; *NST*, 8.9.1994.

Malaysian-Indonesian talks, Jakarta would prefer the issue to be referred to the ASEAN High Council instead of the ICJ.[69]

As in the case of Swallow Reef, the importance of Sipadan and Ligitan does not lie in the potential revenues from tourism in the area, but in the consequences the possession of these two islands has for the maritime border delimitation in the Celebes Sea. The baselines which Kuala Lumpur is currently using to define the Malaysian continental shelf are based on Sipadan and Ligitan, while at the same time ignoring Indonesia's possession of the islands Batuan Unarang and Pulau Maratua. If Sipadan and Ligitan came under the sovereignty of Jakarta, this would mean considerable maritime territorial gains for Indonesia and corresponding losses for Malaysia.[70] Thus the comment by the then deputy prime minister of Malaysia, Ghafar Baba, to the effect that Indonesia had several thousand islands and consequently would lose nothing if it gave up its claim to Sipadan and Ligitan,[71] does not appear particularly convincing.

The Malaysia - Indonesia - Singapore Triangular Relationship

The triangular relationship between Kuala Lumpur, Jakarta and Singapore is a rather complicated structure of cooperation, competition and distrust which can by no means be reduced, as a superficial interpretation might suggest, to the common denominator of Malaysian and Indonesian anti-Chinese solidarity. The reality is more complicated. Since the late 1980s, there have been three parallel developments: a cooling of Indonesian - Malaysian relations; increasing cooperation between Singapore and Jakarta; and a further decline in the already strained relationship between Kuala Lumpur and Singapore.

Apart from the bilateral problems already discussed, some other issues have continued to interfere with the Malaysian-Indonesian relationship, which can nevertheless still be considered as the closest of Malaysia's bilateral relations within ASEAN. In economic matters, particularly in the sphere of raw materials and especially palm oil, Indonesia and Malaysia have increasingly become competitors. Undergoing rapid growth, the Indonesian palm oil industry has the advantage of lower production costs over its Malaysian competitor, which has induced India, formerly the most important customer for Malaysian palm oil, to switch to Indonesian suppliers.[72] Jakarta has rebuffed Kuala Lumpur's proposal to establish an organisation of palm oil-exporting nations, because the introduction of production quotas, which would probably go together with the formation of any such economic pressure group, would slow down the expansion of the Indonesian palm oil industry. Similar problems prevail with respect to tin, rubber and cocoa.[73] In a surprisingly frank interview with the Malaysian daily *Utusan Malaysia* in February 1990, the Indonesian ambassador said:

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[69] See *SWB*, 27.9.1994, p.B/4; 20.2.1995, p.B/5; 1.3.1995, p.B/4; 10.6.1995, p.B/2; *NST*, 9.9., 13.9., 17.9., 27.10.1994; 17.2.1995; *STWOE*, 24.6.1995, p.11.

[70] See Johnston/Valencia, pp.151/152. See map 11.

[71] See *SWB*, 23.12.1992, p.A1/3.

[72] See *FEER*, 1.3.1990, p.10; *STWOE*, 10.2.1990, p.4. See also *NST*, 18.9.1993.

> In the economic field, we are not complementary to each other. We are both moving forward to achieve our respective economic goals. Resources are scarce and we are both scrambling for the same resources.[74]

The execution of an Indonesian national in Sabah in January 1990 for possession of one kilogramme of marijuana, despite several petitions for mercy by Jakarta, provoked openly anti-Malaysian sentiments in Indonesia. Jakarta considered the sentence to be excessive and of dubious legality, since the defence did not have the right to call witnesses and capital punishment for the offence was introduced only three years after the arrest of the accused. In the wake of the incident, anti-Malaysian demonstrations forced a Malaysian government delegation to shorten its visit to Indonesia.[75] Squabbling among Indonesian and Malaysian officers participating in a joint exercise in early 1990 indicated that military cooperation between the two states was also fraught with problems.[76]

In contrast to the declining Malaysian-Indonesian relationship, cooperation between Singapore and Indonesia gathered pace in the late 1980s and early 1990s. Efforts by Singapore's People's Action Party (PAP) government to reduce the city-state's dependence on water from the Malaysian state of Johor were rewarded, in June 1991, with an agreement between Singapore and Jakarta. From the late 1990s, Singapore is supposed to receive about 60 million gallons of Indonesian water per day, providing about a quarter of the city state's current consumption. Ultimately, the city state could receive up to a billion gallons daily.[77] Within the 'growth triangle' involving Singapore, Johor and the Indonesian province of Riau, the economic integration of Singapore with Johor and Riau continues to intensify, whereas the economic relationship between Johor and Riau still leaves much to be desired.[78] In Malaysia, the PAP government's support for the growth triangle is perceived as an attempt to deepen Singapore's relations with Indonesia without snubbing Kuala Lumpur. The diversification of the city-state's water supply as well as the increasing flow of Singaporean investments to Riau instead of Johor were both evident by 1990, but within the context of the growth triangle these changes had taken on a significantly less 'sensitive' character.[79]

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[73] See *FT*, *Survey Malaysia*, 24.8.1990, p.4.

[74] Quoted in *STWOE*, 10.2.1990, p.4.

[75] See *FEER*, 1.3.1990, pp.9/10. See also *STWOE*, 10.2.1990, p.4.

[76] See *FEER*, 1.3.1990, p.9.

[77] See *FEER*, 11.7.1991, p.14; *STWOE*, 29.6.1991, p.1; *SWB*, 1.7.1991, p.A3/4; *EOAe*, July 1991, pp.288/289.

[78] See Yuhanis Kamil/Mari Pangestu/Christine Fredericks, p.67; *FT*, 3.4.1991

Military cooperation between Singapore and Indonesia also intensified. In March 1989, the two states agreed to hold joint exercises involving ground and air forces and inaugurated a joint air-to-ground weapons range in northern Sumatra. In addition, Jakarta gave Singapore access to a training area in southern Sumatra.[80] In August 1991, both countries signed an agreement on the joint development of an air combat manoeuvring range in Sumatra.[81] Despite its own agreements on military cooperation with Indonesia,[82] Malaysia has misgivings about the increasing military collaboration between Singapore and Jakarta. In his quite remarkable interview, already been quoted above, the Indonesian ambassador in Kuala Lumpur showed understanding for Malaysian apprehensions over the increased military cooperation between his country and Singapore. He emphasised, though, that Jakarta did not consider the city state to be a threat of any kind. Referring to Singapore's defence policy he argued:

> Singapore, as a small nation surrounded by the Malay people would naturally feel uneasy. In this matter of being surrounded, perhaps Singapore sees Indonesia as being less of a danger compared with Malaysia, because of historical factors. Perhaps, Singapore wants to make Indonesia a counter-weight against Malaysia so that Malaysia will not exert too much pressure on it.[83]

These remarks did not help to lessen Kuala Lumpur's discontent. The Malaysian daily *Utusan Malaysia*, which is owned by UMNO[84] and had published the interview with the Indonesian ambassador, printed an article stressing that Kuala Lumpur had every reason to be uneasy about the military cooperation between Singapore and Jakarta. Indonesia, the article continued, certainly had the right to enter into such relations with other states, but it should also consider its 'special' relationship with Malaysia.[85]

Nevertheless, bilateral relations between Indonesia and Singapore are not free from problems. In particular, Jakarta's historical distrust of both China and Indonesia's own sizeable ethnic Chinese population necessarily influence its attitude towards a state with a population comprising more than 75% Chinese. 'Persistence of racial anxiety as an underlying, policy-relevant condition'[86] still constitutes a major influence on bilateral relations between the two states. In order to avoid provoking anti-Chinese and anti-Singaporean sentiments, the PAP government continues not to publish its own statistics on trade with Indonesia.[87] In September 1992, the Indonesian defence minister warned that ethnicity remained 'a sensitive factor in Indonesian society', referring to the problems of economic dominance of ethnic Chinese and of China's support for the Communist Party of Indonesia, which had been crushed in 1965/66, as the main reasons for this.[88] In March 1992, the economics minister mentioned the danger of social unrest and communal violence as a reaction against the continuing economic dominance of 'a certain ethnic group'.[89] In recent times, Jakarta has shown some uneasiness over both Singapore's increasingly close relations with China and the loyalty of Indonesia's own Chinese minority.[90] The harping on anti-Chinese sentiments in the course of Suharto's preparations for his reelection in March 1993 has certainly not helped to improve race relations in Indonesia. Indeed, in April 1994 anti-Chinese violence broke out in Medan, capital of northern Sumatra, leaving one ethnic Chinese Indonesian dead and some 150 Chinese shops destroyed.[91] Any further deterioration of ethnic relations in Indonesia would inevitably affect the relationship with Singapore.

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[79] See Huxley (1991), p.209; *FEER*, 1.3.1990, p.10; *FT*, *Survey Singapore*, 9.8.1990, p.5; *FT*, *Survey Malaysia*, 24.8.1990, p.2; *FT*, 5.4.1991.

[80] See *FEER*, 6.4.1989, p.14; 13.4.1989, p.29; 1.3.1990, p.9.

[81] See *STWOE*, 10.8.1991, p.9; *SWB*, 8.8.1991, pp.A3/2, 3.

[82] See *STWOE*, 1.2.1992, p.10; *SWB*, 19.2.1992, p.A3/2.

[83] Quoted in *STWOE*, 10.2.1990, p.4. See also *STWOE*, 17.2.1990, p.10.

[84] See Means, p.137.

[85] See *STWOE*, 17.2.1990, p.10.

If Kuala Lumpur is criticising the increasing military cooperation between Jakarta and Singapore, and Singapore continues to harbour considerable misgivings about cooperation between the Malaysian and Indonesian armed forces,[92] then Jakarta feels snubbed by continued Malaysian and Singaporean involvement in the Five Power Defence Arrangements (FPDA). Established in 1971 by Britain, Australia, New Zealand, Malaysia and Singapore, the FPDA constitute a rather loose military quasi-alliance. Due to doubts over the future level of American commitment to regional security, the FPDA have regained some importance as an alternative form of regional security cooperation since the end of the 1980s.[93] Given the fact that the memory of Indonesia's *Konfrontasi* against Malaysia and Singapore was one of the motivating factors behind the formation of the FPDA, Jakarta cannot but consider the continuation of the Arrangements as a sign of at least residual mistrust of Indonesia on the parts of Malaysia and Singapore.[94]

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[86] Emmerson, Donald K., 'Continuity and Rationality in Indonesian Foreign Policy: A Reappraisal', in: Jackson (Ed.), pp.88-109, p.94.

[87] See Regnier, p.44.

[88] *STWOE*, 12.9.1992, p.11.

[89] *ADJ*, April 1992, p.34.

[90] See *FEER*, 22.10.1992, p.16; 2.12.1993, p.17.

[91] See *FEER*, 28.4.1994, pp.14/15; 14.7.1994, pp.46-51; *SOAs*, May 1994, p.200.

[92] This was made obvious by Singapore's almost hysterical reaction to a joint Indonesian-Malaysian military exercise in Johor in August 1991, which coincided with Singapore's National Day. For details see chapter 2.

[93] See Chin Kin Wah, pp.193-197.

Conclusion

Although Indonesia is still Malaysia's closest ASEAN partner and *vice versa*, their relations have seriously deteriorated during the early 1990s, with competition replacing cooperation in many respects. Simultaneously, the triangular relationship between Kuala Lumpur, Jakarta, and Singapore has shifted towards closer relations between the latter two. The ethnic dimension of the Singapore-Indonesian relationship, however, is likely to set certain limits to this process.

The leadership challenge will continue as long as Dr Mahathir and Suharto remain in office. It may even intensify after Suharto's 1998 retirement, which will make Malaysia's prime minister, who will probably remain in office for one more term (i.e. until 2000), ASEAN's senior head of government. This, however, would pose Malaysian 'seniority' against Jakarta's perception of Indonesia as a regional power.

The dispute over Sipadan and Ligitan has become more virulent than ever. Although both sides would vehemently reject any such assumption, it seems that Malaysia's new RDF as well as large-scale Indonesian naval exercises are at least partly related to the problem. The 1992 warning by Malaysia's defence minister about the possibility of 'untoward incidents' in the area appears symptomatic of the real state of bilateral relations between Jakarta and Kuala Lumpur.

The conflict in Aceh will continue to affect bilateral relations. However, the main damage has already been done, and as long as there are no significant numbers of new Acehnese refugees to Malaysia; the issue is likely to lose some of its importance.

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[94] See Chin Kin Wah, p.201; Mochtar Kusuma-Atmadja, p.169.

Annex 35

PRESS RELEASES AND DOCUMENTS FROM THE INDONESIAN GOVERNMENT CONCERNING THE HOSTAGE-TAKING SITUATION ON SIPADAN IN APRIL 2000

1. Press release of the Indonesian Embassy, Paris, dated 3 May 2000

2. Letter from I.G.N.K. Sumantera, the Indonesian Ambassador to Belgium, to *Journal le Soir*, dated 19 May 2000

3. Letter from Slamet S. Mustafa, Indonesian Embassy, Bangkok to the editor of the *Bangkok Post (Postbag)*, dated 5 June 2000; copies of the original and published letters

4. Letter from Slamet S. Mustafa, Chargé d'Affaires a.i., Indonesian Embassy, Bangkok to the editor of *The Nation*, dated 5 June 2000; copies of the original and published letters

5. Letter from Soegeng Soediro, Indonesian Embassy, Seoul to the managing editor of *The Dong-A Ilbo*, dated 14 June 2000

6. Letter from Mr. Sanusi, Minister Counsellor, Indonesian Embassy, Singapore to the editor of *The Straits Times*, dated 17 May 2000

7. Letter from the Indonesian Embassy, Singapore to the Singapore Ministry of Foreign Affairs, dated 3 May 2000

8. Press release of the Indonesian Embassy, Singapore, dated 29 April 2000

9. Letter from Zakaria Soemintaatmadja, the Indonesian Ambassador to India to the editor-in-chief of *The Asian Age*, dated 22 May 2000

10. Letter from Zakaria Soemintaatmadja, the Indonesian Ambassador to India, to the editor of the *National Herald*, dated 22 May 2000

11. Letter from Zakaria Soemintaatmadja, the Indonesian Ambassador to India, to the ex-managing editor of *The Hindustan Times*, dated 22 May 2000

12. Letter from Zakaria Soemintaatmadja, the Indonesian Ambassador to India, to the editor-in-chief of *The Indian Express*, dated 22 May 2000

13. Letter from Zakaria Soemintaatmadja, the Indonesian Ambassador to India, to the editor-in-chief of *The Statesman*, New Delhi, dated 22 May 2000

14. Letter from Professor Dr. Baharuddin Lopa, Indonesian Ambassador to Saudi Arabia, to the editor-in-chief, *The Riyadh Daily*, dated 20 May 2000

INDONESIA

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COMMUNIQUE DE PRESSE

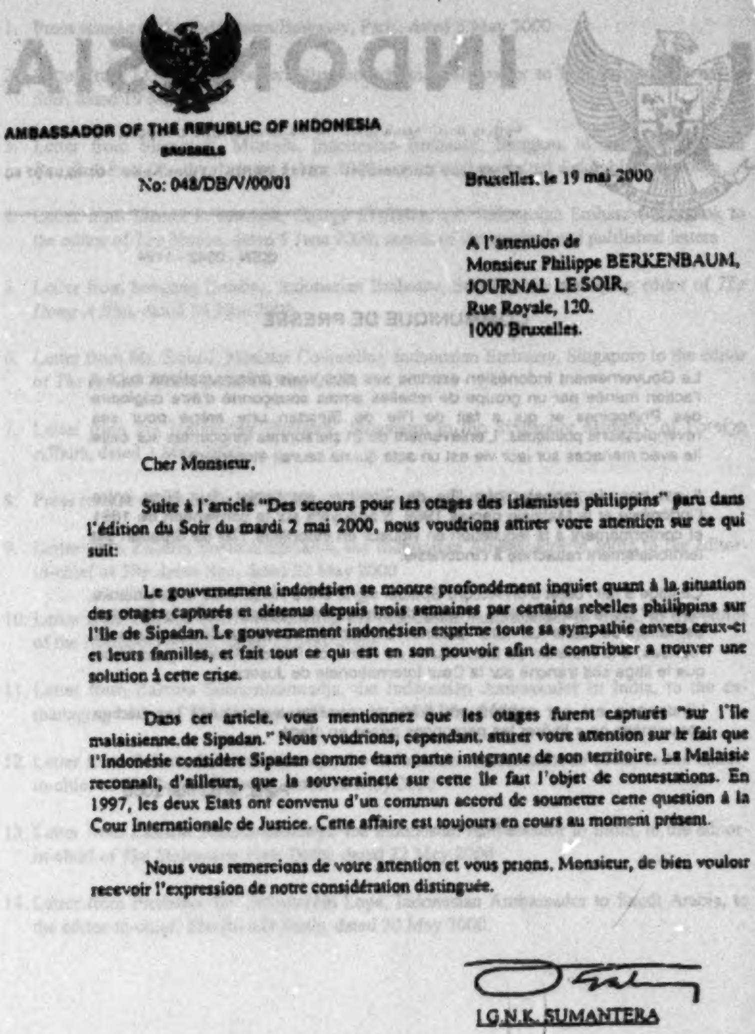
Le Gouvernement Indonésien exprime ses plus vives préoccupations suite à l'action menée par un groupe de rebelles armés soupçonné d'être originaire des Philippines et qui a fait de l'île de Sipadan une arène pour ses revendications politiques. L'enlèvement de 21 personnes innocentes sur cette île avec menaces sur leur vie est un acte qui ne saurait être toléré.

Il est bon de rappeler que l'île de Sipadan, est l'objet d'un litige entre l'Indonésie et la Malaisie depuis 1969. S'appuyant sur la convention de 1891 et conformément à la législation en vigueur en Indonésie, l'île de Sipadan est territorialement rattachée à l'Indonésie.

Ce litige a fait l'objet d'un Accord Spécial signé entre l'Indonésie et la Malaisie en 1997 qui a été soumis à la Cour de Justice Internationale dont la décision est attendue dans un futur proche. L'Indonésie a demandé, à plusieurs reprises, à la Malaisie de bien vouloir se retirer de l'île de Sipadan jusqu'à ce que le litige soit tranché par la Cour Internationale de Justice.

L'Indonésie est par conséquent prête à coopérer avec toutes les parties concernées pour libérer les personnes prises en otage.

Paris, le 03 mai 2000



AMBASSADOR OF THE REPUBLIC OF INDONESIA
BRUSSELS

No: 048/DB/V/00/01

Bruxelles, le 19 mai 2000

A l'attention de
Monsieur Philippe BERKENBAUM,
JOURNAL LE SOIR,
Rue Royale, 120.
1000 Bruxelles.

Cher Monsieur,

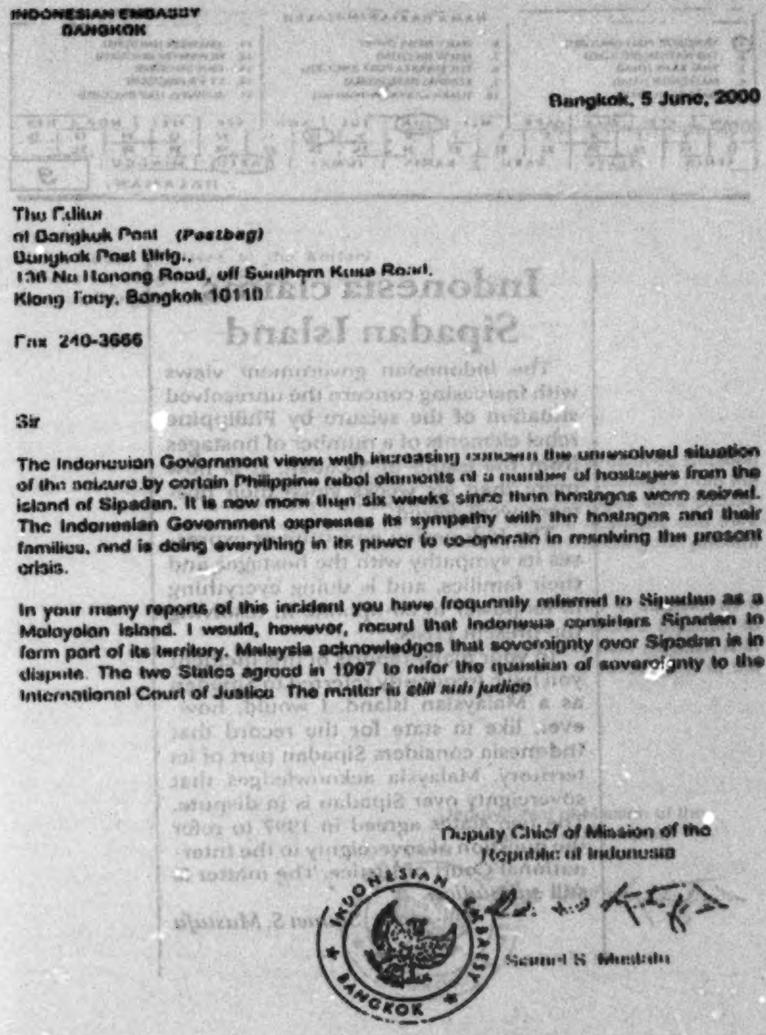
Suite à l'article "Des secours pour les otages des islamistes philippins" paru dans l'édition du Soir du mardi 2 mai 2000, nous voudrions attirer votre attention sur ce qui suit:

Le gouvernement indonésien se montre profondément inquiet quant à la situation des otages capturés et détenus depuis trois semaines par certains rebelles philippins sur l'île de Sipadan. Le gouvernement indonésien exprime toute sa sympathie envers ceux-ci et leurs familles, et fait tout ce qui est en son pouvoir afin de contribuer a trouver une solution à cette crise.

Dans cet article, vous mentionnez que les otages furent capturés "sur l'île malaisienne de Sipadan." Nous voudrions, cependant, attirer votre attention sur le fait que l'Indonésie considère Sipadan comme étant partie intégrante de son territoire. La Malaisie reconnaît, d'ailleurs, que la souveraineté sur cette île fait l'objet de contestations. En 1997, les deux Etats ont convenu d'un commun accord de soumettre cette question à la Cour Internationale de Justice. Cette affaire est toujours en cours au moment présent.

Nous vous remercions de votre attention et vous prions, Monsieur, de bien vouloir recevoir l'expression de notre considération distinguée.

I.G.N.K. SUMANTERA



INDONESIAN EMBASSY
BANGKOK

Bangkok, 5 June, 2000

The Editor
of Bangkok Post *(Postbag)*
Bangkok Post Bldg.,
136 Na Ranong Road, off Sunthorn Kosa Road,
Klong Toey, Bangkok 10110

Fax 240-3666

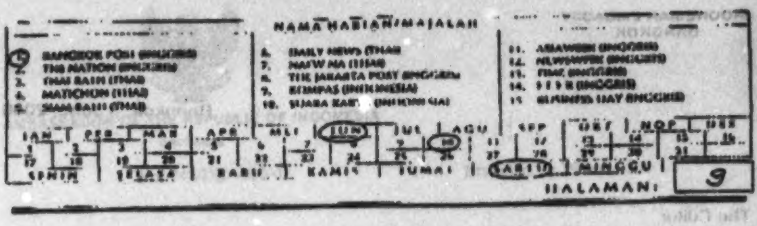
Sir

The Indonesian Government views with increasing concern the unresolved situation of the seizure by certain Philippine rebel elements of a number of hostages from the island of Sipadan. It is now more than six weeks since the hostages were seized. The Indonesian Government expresses its sympathy with the hostages and their families, and is doing everything in its power to co-operate in resolving the present crisis.

In your many reports of this incident you have frequently referred to Sipadan as a Malaysian island. I would, however, record that Indonesia considers Sipadan to form part of its territory. Malaysia acknowledges that sovereignty over Sipadan is in dispute. The two States agreed in 1997 to refer the question of sovereignty to the International Court of Justice. The matter is *still sub judice*

Deputy Chief of Mission of the
Republic of Indonesia

Samuel S Mustafa



NAMA HARIAN/MAJALAH

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2. THE NATION (INGGRIS)
3. THAI RATH (THAI)
4. MATICHON (THAI)
5. SIAM RATH (THAI)
6. DAILY NEWS (THAI)
7. NAEW NA (THAI)
8. THE JAKARTA POST (INGGRIS)
9. KOMPAS (INDONESIA)
10. SUARA KARYA (INDONESIA)
11. ASIAWEEK (INGGRIS)
12. NEWSWEEK (INGGRIS)
13. TIME (INGGRIS)
14. F E E R (INGGRIS)
15. BUSINESS DAY (INGGRIS)

JAN FEB MAR APR MEI [✓ JUN] JUL AGU SEP OKT NOP DES

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17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

SENIN SELASA RABU KAMIS JUMAT [✓ SABTU] MINGGU

HALAMAN: 9

Indonesia claims Sipadan Island

The Indonesian government views with increasing concern the unresolved situation of the seizure by Philippine rebel elements of a number of hostages from the island of Sipadan. It is now more than six weeks since then hostages were seized.

The Indonesian government expresses its sympathy with the hostages and their families, and is doing everything in its power to co-operate in resolving the present crisis.

In your many reports of this incident you have frequently referred to Sipadan as a Malaysian island. I would, however, like to state for the record that Indonesia considers Sipadan part of its territory. Malaysia acknowledges that sovereignty over Sipadan is in dispute. The two states agreed in 1997 to refer the question of sovereignty to the International Court of Justice. The matter is still *sub judice*.

Slamet S. Mustafa

INDONESIAN EMBASSY
BANGKOK

Bangkok, 5 June, 2000

The Editor
of The Nation *(Letters to the Editor)*
44 Moo 10, Bangna Trat Road, Km. 4.5,
Bangna, Bangkok 10260

Fax 317-2071

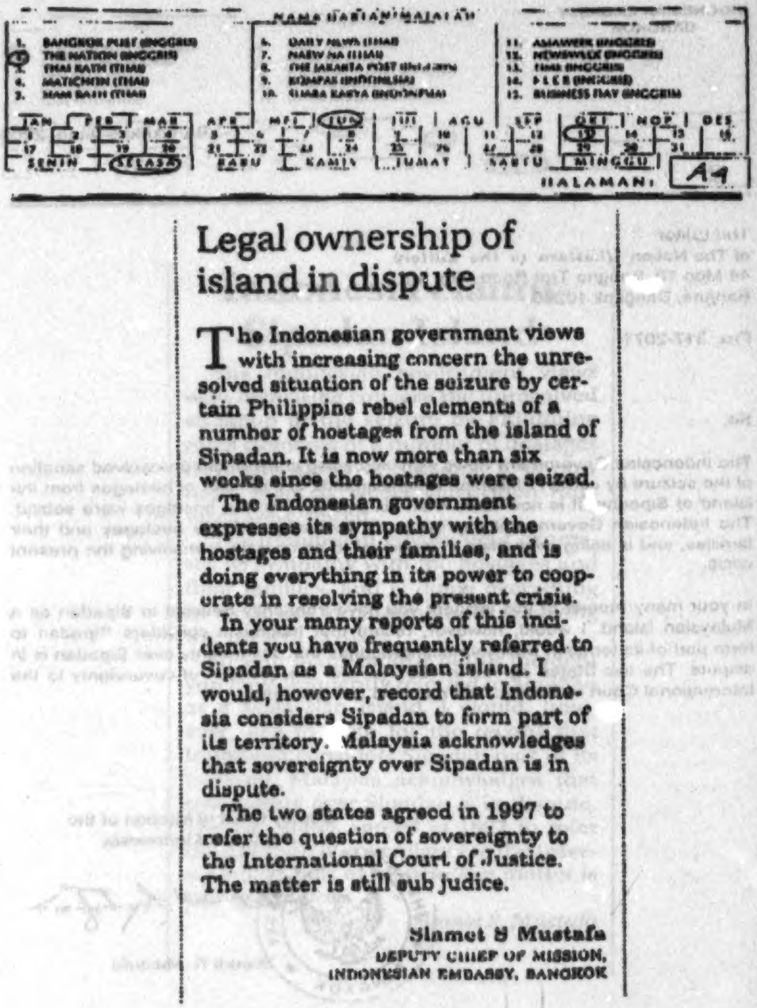
Sir,

The Indonesian Government views with increasing concern the unresolved situation of the seizure by certain Philippine rebel elements of a number of hostages from the island of Sipadan. It is now more than six weeks since the hostages were seized. The Indonesian Government expresses its sympathy with the hostages and their families, and is doing everything in its power to co-operate in resolving the present crisis.

In your many reports of this incident you have frequently referred to Sipadan as a Malaysian island. I would, however, record that Indonesia considers Sipadan to form part of its territory. Malaysia acknowledges that sovereignty over Sipadan is in dispute. The two States agreed in 1997 to refer the question of sovereignty to the International Court of Justice. The matter is *still sub judice*.

Deputy Chief of Mission of the
Republic of Indonesia

[illegible] S. Mustafa



NAMA HARIAN/MAJALAH

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3. THAI RATH (THAI)
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5. SIAM RATH (THAI)
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15. BUSINESS DAY (INGGRIS)

JAN FEB MAR APR MEI [✓ JUN] JUL AGU SEP OKT NOP DES

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17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

SENIN [✓ SELASA] RABU KAMIS JUMAT SABTU MINGGU

HALAMAN: A4

Legal ownership of island in dispute

The Indonesian government views with increasing concern the unresolved situation of the seizure by certain Philippine rebel elements of a number of hostages from the island of Sipadan. It is now more than six weeks since the hostages were seized.

The Indonesian government expresses its sympathy with the hostages and their families, and is doing everything in its power to cooperate in resolving the present crisis.

In your many reports of this incidents you have frequently referred to Sipadan as a Malaysian island. I would, however, record that Indonesia considers Sipadan to form part of its territory. Malaysia acknowledges that sovereignty over Sipadan is in dispute.

The two states agreed in 1997 to refer the question of sovereignty to the International Court of Justice. The matter is still sub judice.

Slamet S Mustafa
DEPUTY CHIEF OF MISSION,
INDONESIAN EMBASSY, BANGKOK

EMBASSY OF THE REPUBLIC OF INDONESIA
55, YOIDO-DONG, YOUNG DEUNG PO – KU
SEOUL

Seoul, 14 June 2000.

Mr. Choi Kyu-chul
Managing Editor
The Dong-A Ilbo.
Attn. Mr. Baek Kyong-hak

Dear Mr. Choi,

I would like to inform you that the Indonesian Government views with increasing concern the unresolved situation of the seizure by certain Philippine rebel elements of a number of hostages from the island of Sipadan. It is now seven weeks since the hostages were seized. The Indonesian government expresses its sympathy with the hostages and their families, and is doing everything in its power to co-operate in resolving the present crisis.

In your reports of this incident, you have frequently referred to Sipadan as a Malaysian resort island. I would, however, record that Indonesia considers Sipadan to form part of its territory. Malaysia acknowledges that sovereignty over Sipadan is in dispute. The two States agreed in 1997 to refer the question of sovereignty to the International Court of Justice. The matter is still *sub judice*.

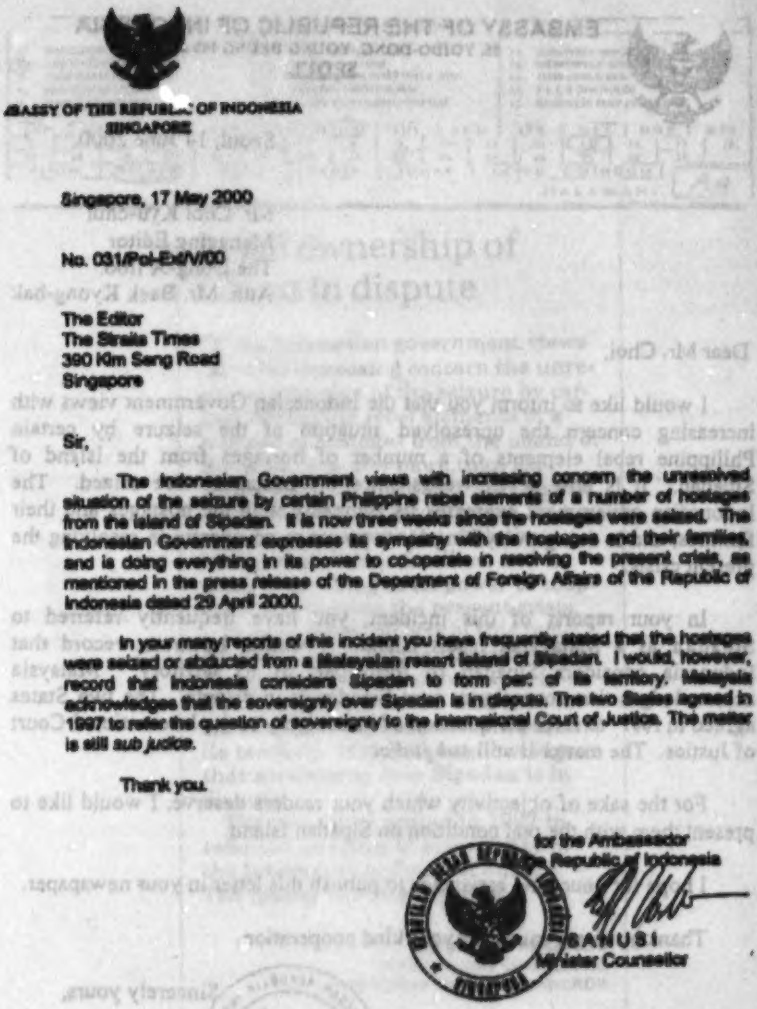
For the sake of objectivity which your readers deserve, I would like to present them with the real condition on Sipadan Island.

I hope for your kind assistance to publish this letter in your newspaper.

Thank you very much for your kind cooperation.

Sincerely yours,

Soegeng Soediro
Charge d'Affaires a.i.



EMBASSY OF THE REPUBLIC OF INDONESIA
SINGAPORE

Singapore, 17 May 2000

No. 031/Pol-Ext/V/00

The Editor
The Straits Times
390 Kim Seng Road
Singapore

Sir,

The Indonesian Government views with increasing concern the unresolved situation of the seizure by certain Philippine rebel elements of a number of hostages from the island of Sipadan. It is now three weeks since the hostages were seized. The Indonesian Government expresses its sympathy with the hostages and their families, and is doing everything in its power to co-operate in resolving the present crisis, as mentioned in the press release of the Department of Foreign Affairs of the Republic of Indonesia dated 29 April 2000.

In your many reports of this incident you have frequently stated that the hostages were seized or abducted from a Malaysian resort island of Sipadan. I would, however, record that Indonesia considers Sipadan to form part of its territory. Malaysia acknowledges that the sovereignty over Sipadan is in dispute. The two States agreed in 1997 to refer the question of sovereignty to the International Court of Justice. The matter is still *sub judice*.

Thank you.

for the Ambassador
Republic of Indonesia

SANUSI
Minister Counsellor

EMBASSY OF THE REPUBLIC OF INDONESIA
SINGAPORE

No. 085/KBRI/FR/0500

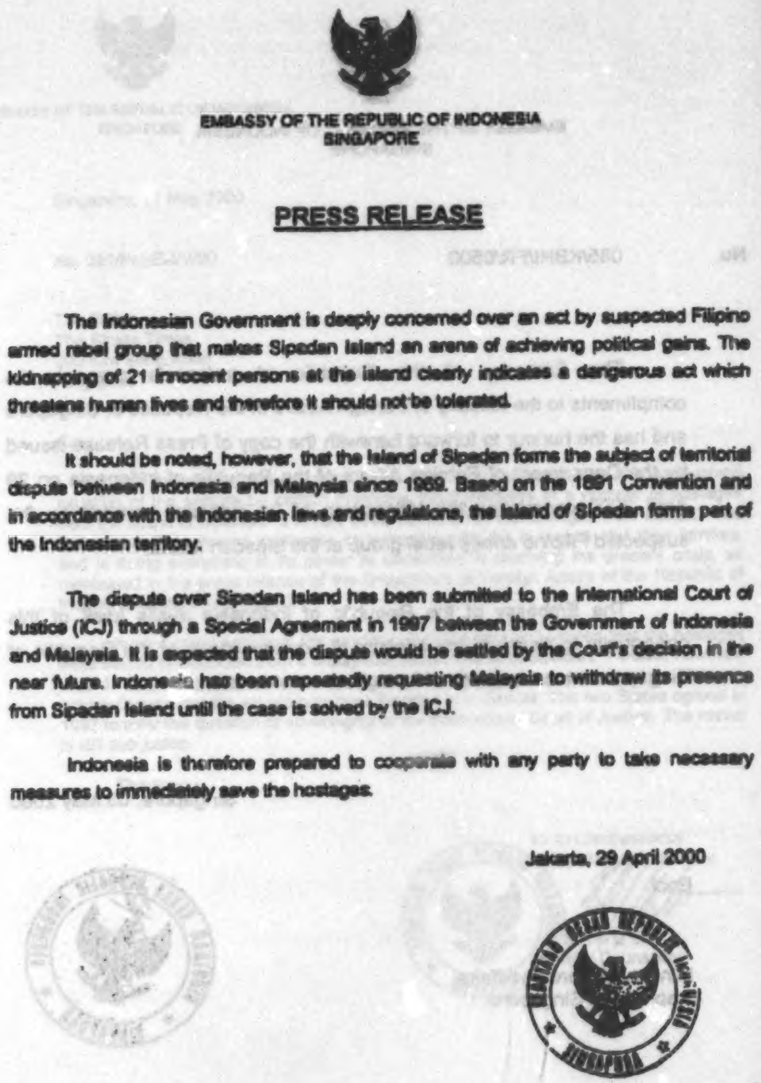
The Embassy of the Republic of Indonesia presents its compliments to the Ministry of Foreign Affairs of the Republic of Singapore and has the honour to forward herewith the copy of Press Release issued by the Department of Foreign Affairs of the Republic of Indonesia on 29 April 2000 concerning the kidnapping of 21 innocent persons by the suspected Filipino armed rebel group at the Sipadan Island.

The Embassy of the Republic of Indonesia avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Singapore the assurances of its highest consideration.

Singapore, 03 May 2000

Encl.

Ministry of Foreign Affairs
Republic of Singapore.



EMBASSY OF THE REPUBLIC OF INDONESIA
SINGAPORE

PRESS RELEASE

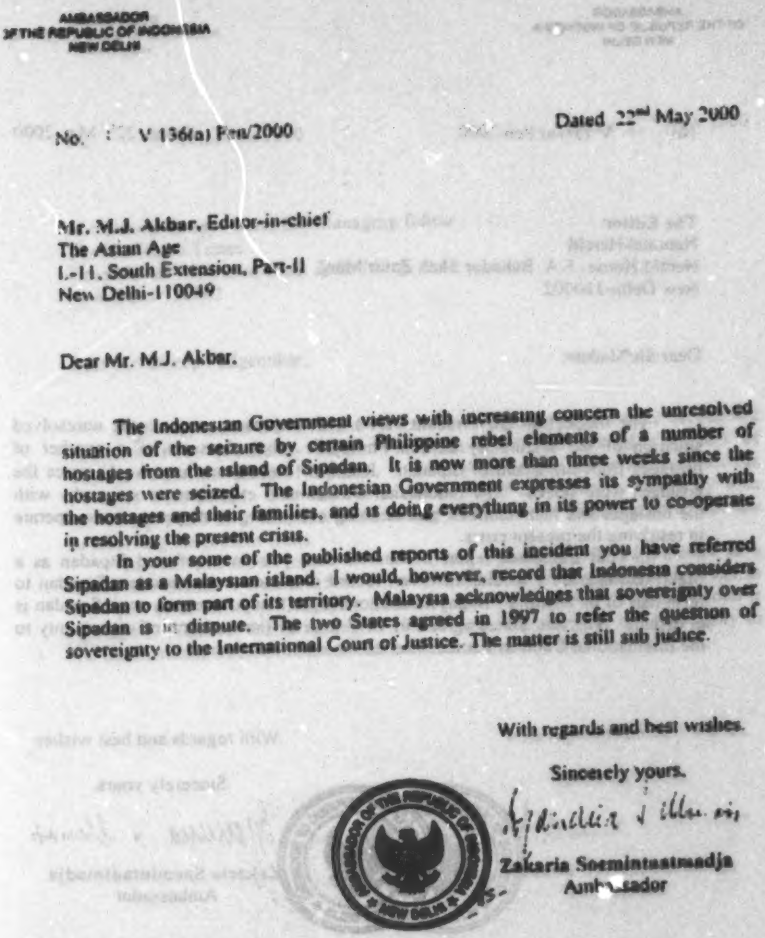
The Indonesian Government is deeply concerned over an act by suspected Filipino armed rebel group that makes Sipadan Island an arena of achieving political gains. The kidnapping of 21 innocent persons at the island clearly indicates a dangerous act which threatens human lives and therefore it should not be tolerated.

It should be noted, however, that the island of Sipadan forms the subject of territorial dispute between Indonesia and Malaysia since 1969. Based on the 1891 Convention and in accordance with the Indonesian laws and regulations, the island of Sipadan forms part of the Indonesian territory.

The dispute over Sipadan Island has been submitted to the International Court of Justice (ICJ) through a Special Agreement in 1997 between the Government of Indonesia and Malaysia. It is expected that the dispute would be settled by the Court's decision in the near future. Indonesia has been repeatedly requesting Malaysia to withdraw its presence from Sipadan Island until the case is solved by the ICJ.

Indonesia is therefore prepared to cooperate with any party to take necessary measures to immediately save the hostages.

Jakarta, 29 April 2000



AMBASSADOR
OF THE REPUBLIC OF INDONESIA
NEW DELHI

No. [illegible] V 136(a) Pen/2000

Dated 22nd May 2000

Mr. M.J. Akbar, Editor-in-chief
The Asian Age
L-11, South Extension, Part-II
New Delhi-110049

Dear Mr. M.J. Akbar,

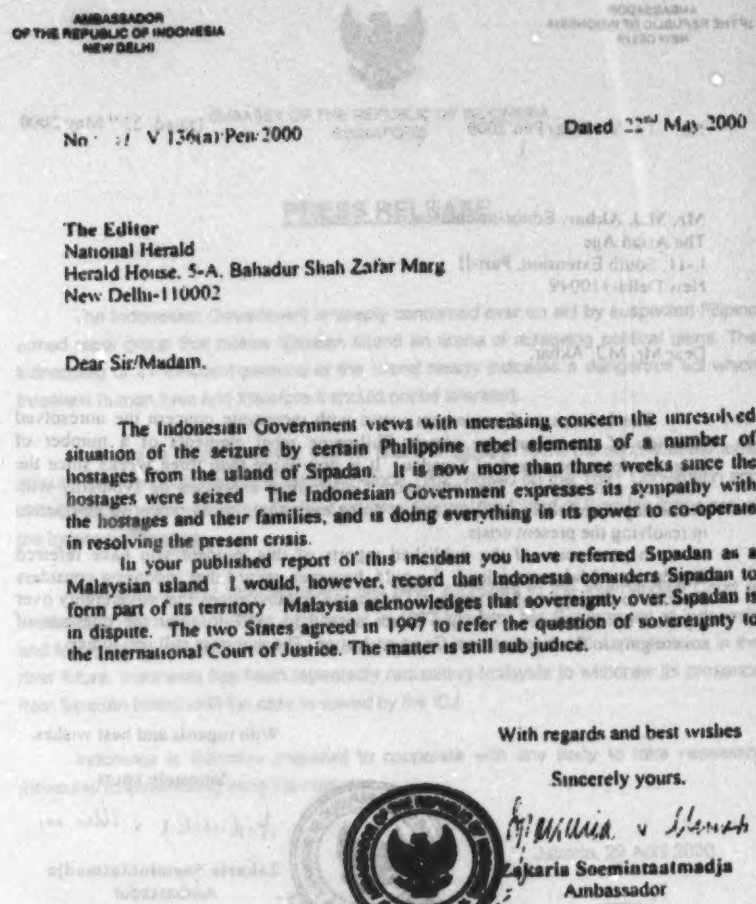
The Indonesian Government views with increasing concern the unresolved situation of the seizure by certain Philippine rebel elements of a number of hostages from the island of Sipadan. It is now more than three weeks since the hostages were seized. The Indonesian Government expresses its sympathy with the hostages and their families, and is doing everything in its power to co-operate in resolving the present crisis.

In your some of the published reports of this incident you have referred Sipadan as a Malaysian island. I would, however, record that Indonesia considers Sipadan to form part of its territory. Malaysia acknowledges that sovereignty over Sipadan is in dispute. The two States agreed in 1997 to refer the question of sovereignty to the International Court of Justice. The matter is still sub judice.

With regards and best wishes.

Sincerely yours.

Zakaria Soemintaatmadja
Ambassador



AMBASSADOR
OF THE REPUBLIC OF INDONESIA
NEW DELHI

No [illegible] V 136(a)/Pen/2000 Dated 22nd May 2000

The Editor
National Herald
Herald House, 5-A, Bahadur Shah Zafar Marg
New Delhi-110002

Dear Sir/Madam,

The Indonesian Government views with increasing concern the unresolved situation of the seizure by certain Philippine rebel elements of a number of hostages from the island of Sipadan. It is now more than three weeks since the hostages were seized. The Indonesian Government expresses its sympathy with the hostages and their families, and is doing everything in its power to co-operate in resolving the present crisis.

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With regards and best wishes

Sincerely yours.

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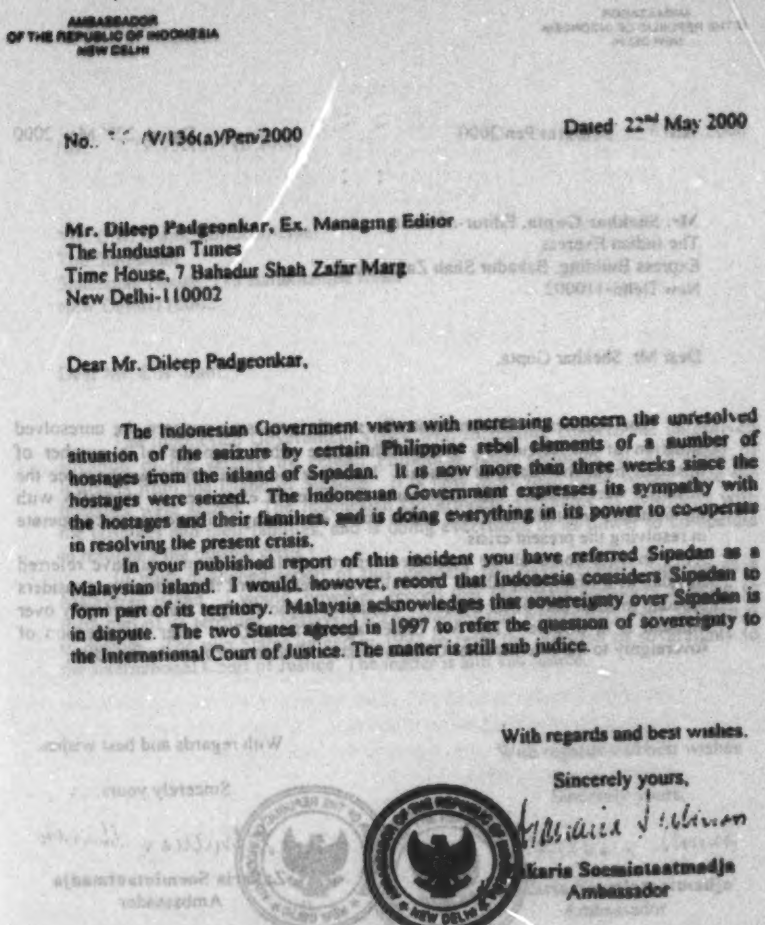
Ambassador



AMBASSADOR
OF THE REPUBLIC OF INDONESIA
NEW DELHI

No.. [illegible] /V/136(a)/Pen/2000

Dated 22nd May 2000

Mr. Dileep Padgeonkar, Ex. Managing Editor
The Hindustan Times
Time House, 7 Bahadur Shah Zafar Marg
New Delhi-110002

Dear Mr. Dileep Padgeonkar,

The Indonesian Government views with increasing concern the unresolved situation of the seizure by certain Philippine rebel elements of a number of hostages from the island of Sipadan. It is now more than three weeks since the hostages were seized. The Indonesian Government expresses its sympathy with the hostages and their families, and is doing everything in its power to co-operate in resolving the present crisis.

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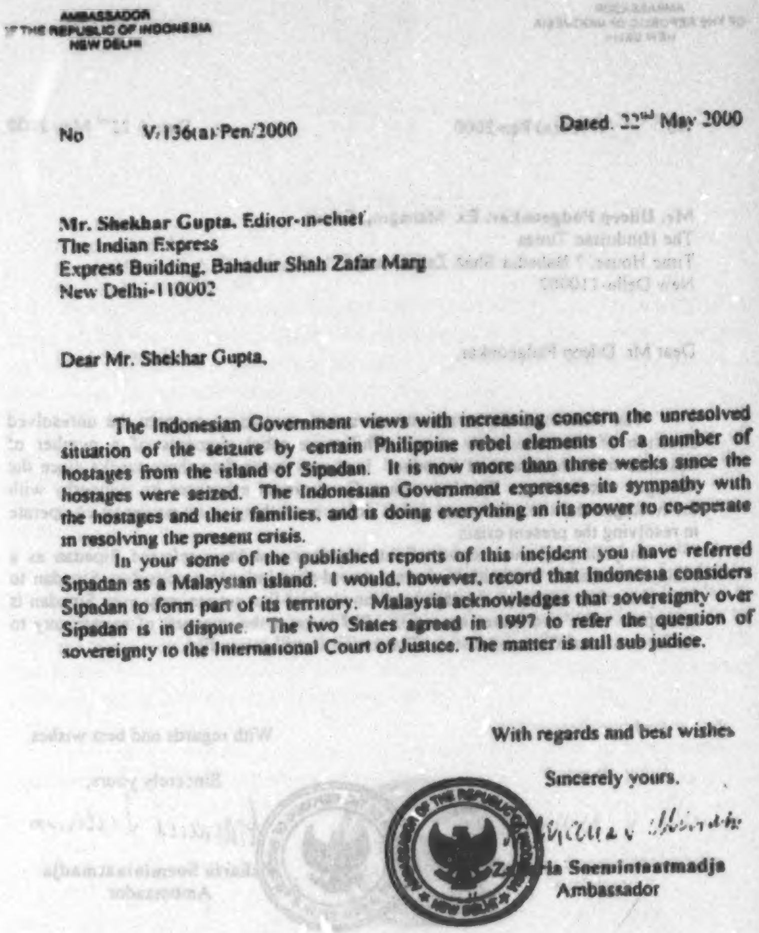
With regards and best wishes.

Sincerely yours,

karia Soemintaatmadja
Ambassador



AMBASSADOR
OF THE REPUBLIC OF INDONESIA
NEW DELHI

No V/136(a)/Pen/2000 Dated. 22nd May 2000

Mr. Shekhar Gupta, Editor-in-chief,
The Indian Express
Express Building, Bahadur Shah Zafar Marg
New Delhi-110002

Dear Mr. Shekhar Gupta,

The Indonesian Government views with increasing concern the unresolved situation of the seizure by certain Philippine rebel elements of a number of hostages from the island of Sipadan. It is now more than three weeks since the hostages were seized. The Indonesian Government expresses its sympathy with the hostages and their families, and is doing everything in its power to co-operate in resolving the present crisis.

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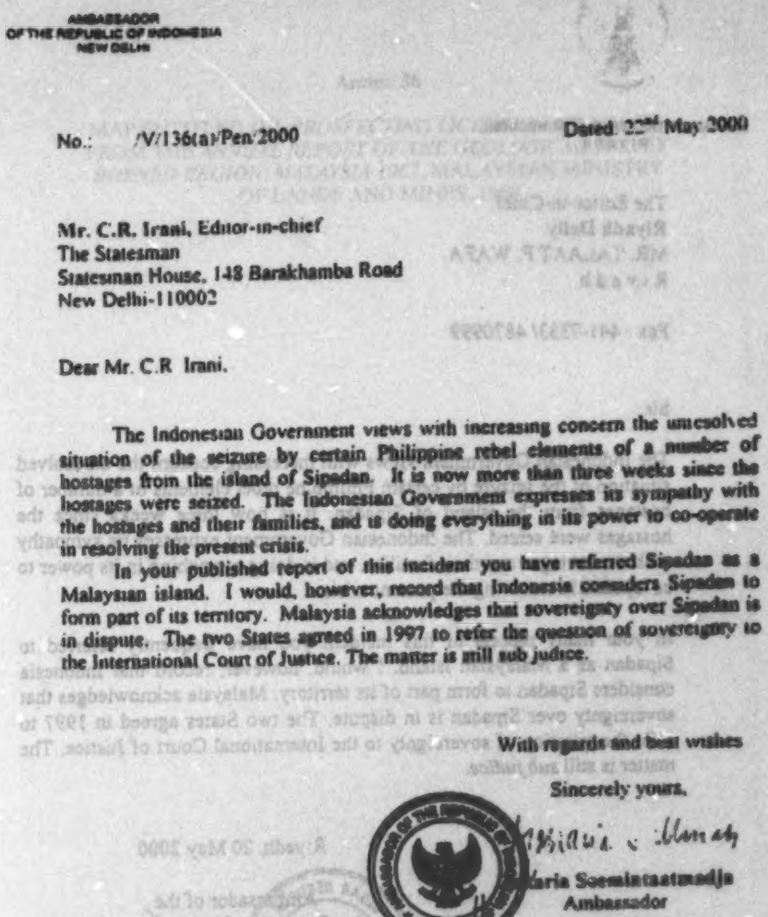
With regards and best wishes

Sincerely yours,

Z[illegible]ria Soemintaatmadja
Ambassador



AMBASSADOR
OF THE REPUBLIC OF INDONESIA
NEW DELHI

No.: /V/136(a)/Pen/2000

Dated. 22nd May 2000

Mr. C.R. Irani, Editor-in-chief
The Statesman
Statesman House, 148 Barakhamba Road
New Delhi-110002

Dear Mr. C.R Irani,

The Indonesian Government views with increasing concern the unresolved situation of the seizure by certain Philippine rebel elements of a number of hostages from the island of Sipadan. It is now more than three weeks since the hostages were seized. The Indonesian Government expresses its sympathy with the hostages and their families, and is doing everything in its power to co-operate in resolving the present crisis.

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Sincerely yours,

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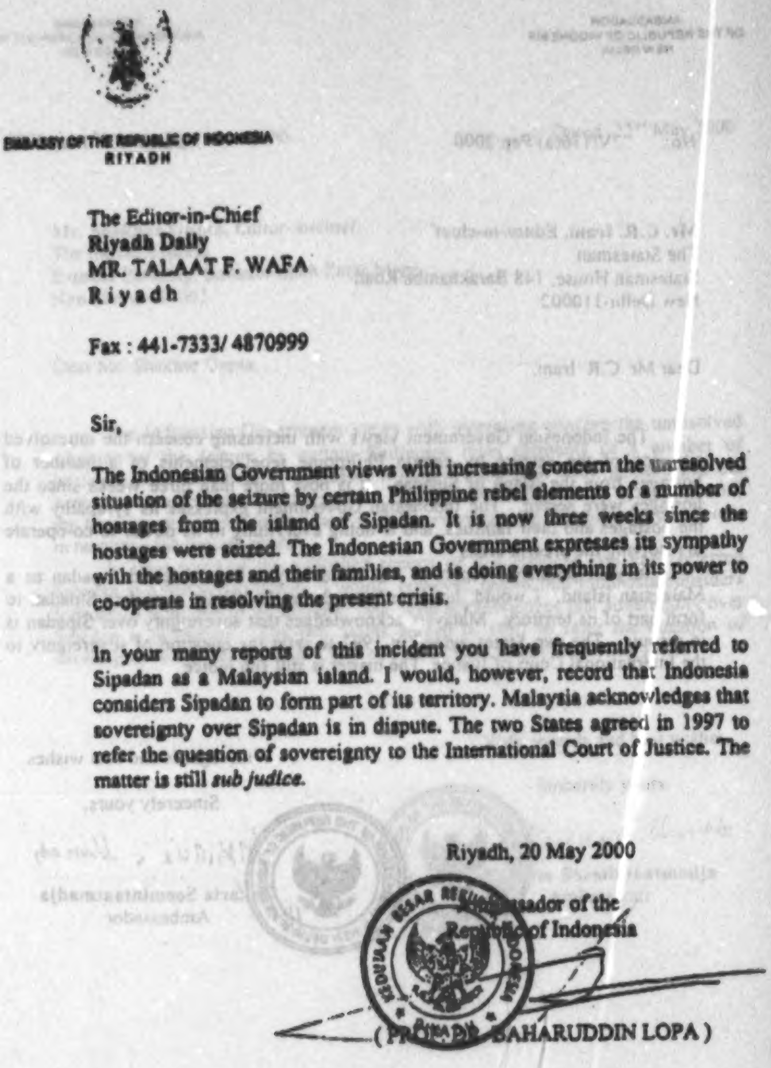
Ambassador



EMBASSY OF THE REPUBLIC OF INDONESIA
RIYADH

The Editor-in-Chief
Riyadh Daily
MR. TALAAT F. WAFA
Riyadh

Fax : 441-7333/ 4870999

Sir,

The Indonesian Government views with increasing concern the unresolved situation of the seizure by certain Philippine rebel elements of a number of hostages from the island of Sipadan. It is now three weeks since the hostages were seized. The Indonesian Government expresses its sympathy with the hostages and their families, and is doing everything in its power to co-operate in resolving the present crisis.

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Riyadh, 20 May 2000

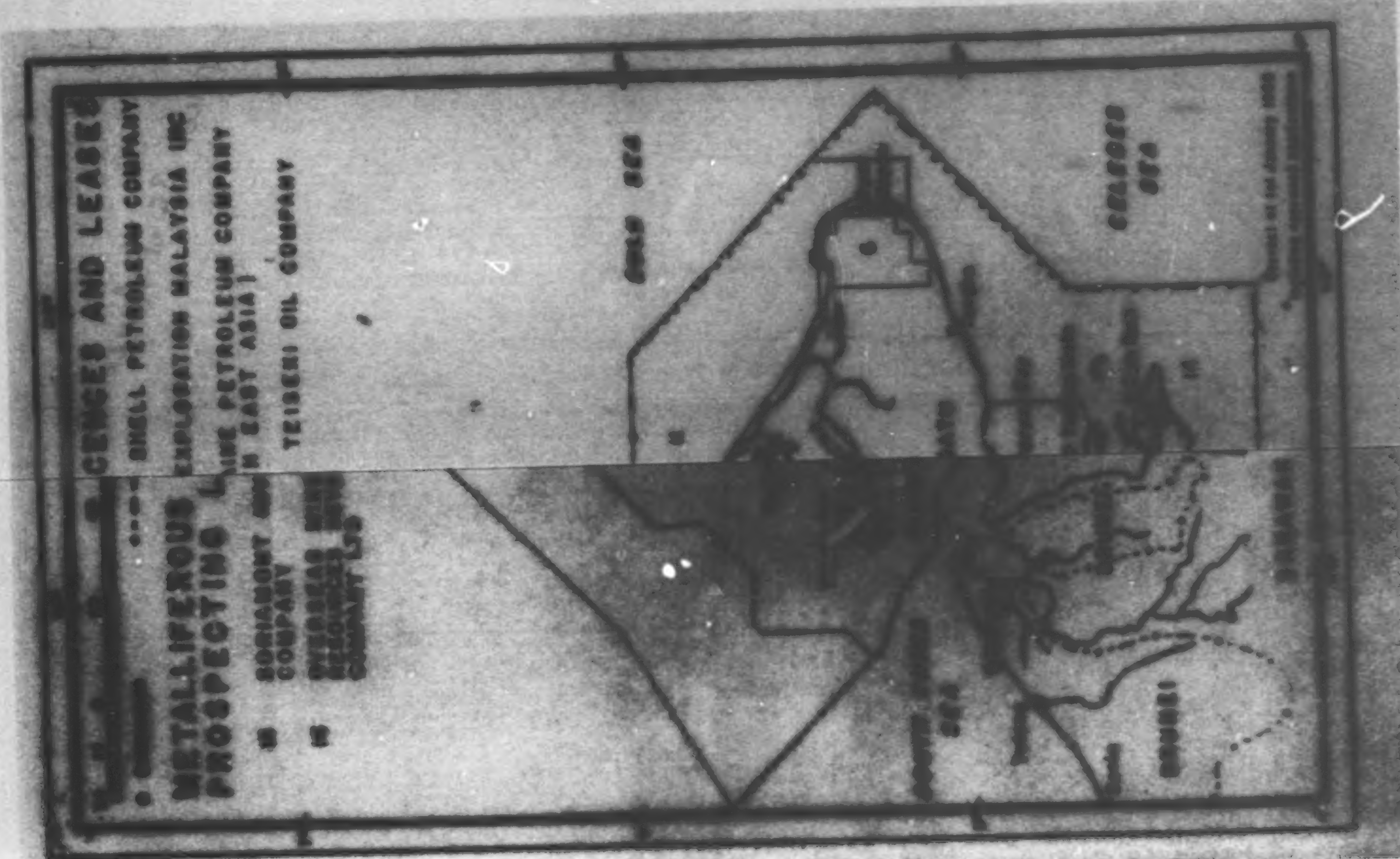
Ambassador of the
Republic of Indonesia

(PROF. DR. BAHARUDDIN LOPA)

Annex 36

MAP ENTITLED *OIL PROSPECTING LICENCES AND LEASES*, FROM THE *ANNUAL REPORT OF THE GEOLOGICAL SURVEY, BORNEO REGION, MALAYSIA 1967*, MALAYSIAN MINISTRY OF LANDS AND MINES, 1968

SOUTH CHINA SEA
BRUNEI
SARAWAK
Sabah Mineral Resources
31


CENCES AND LEASES
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EXPLORATION MALAYSIA INC
INE PETROLEUM COMPANY
N EAST ASIA)
TEISEKI OIL COMPANY
METALLIFEROUS
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CELEBES SEA
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BRUNEI
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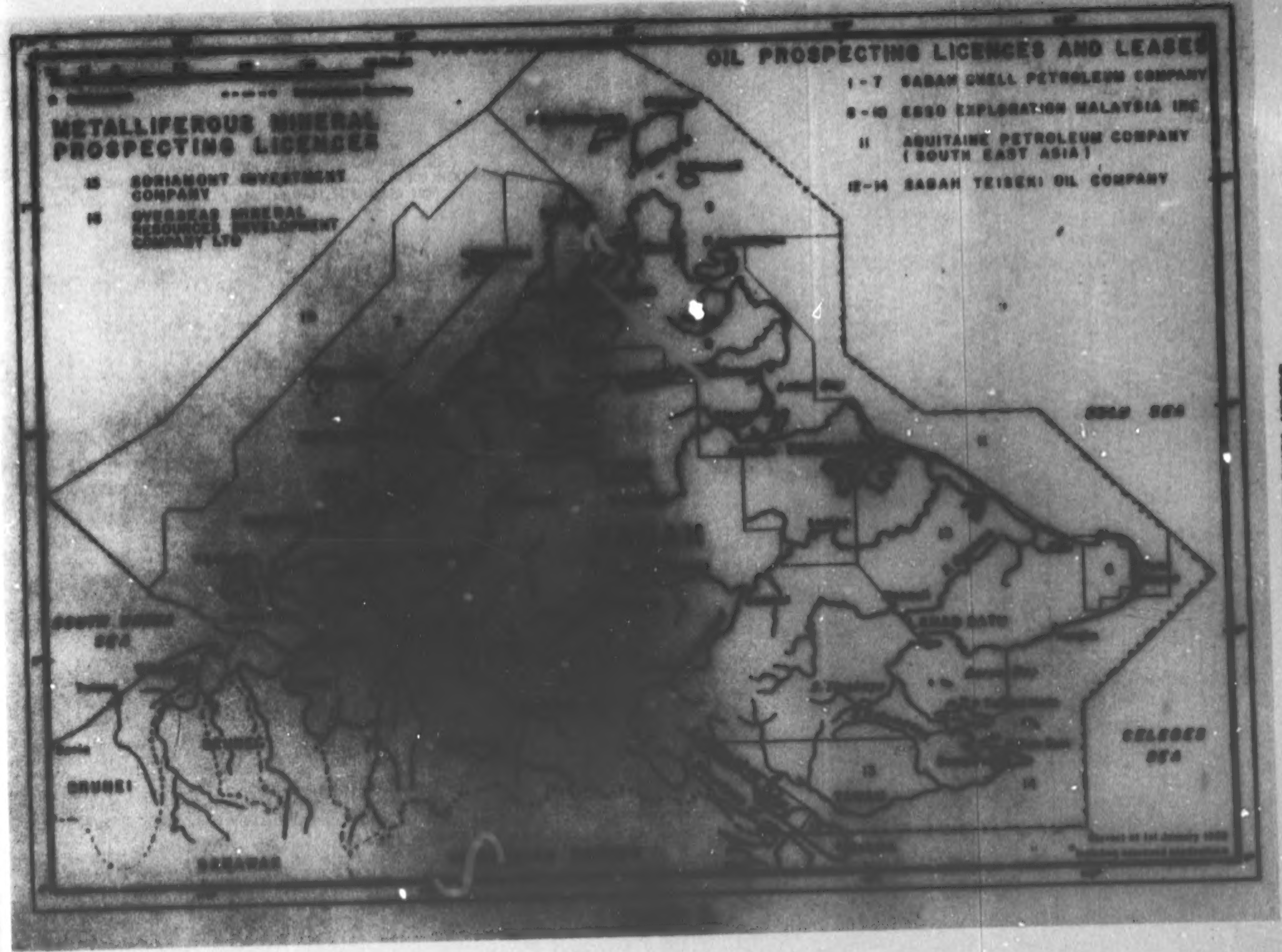
OIL PROSPECTING LICENCES AND LEASES
1-7 SABAH SHELL PETROLEUM COMPANY
8-10 ESSO EXPLORATION MALAYSIA INC
11 AQUITAINE PETROLEUM COMPANY (SOUTH EAST ASIA)
12-14 SABAH TEISEKI OIL COMPANY
METALLIFEROUS MINERAL PROSPECTING LICENCES
15 SORIAMONT INVESTMENT COMPANY
16 OVERSEAS MINERAL RESOURCES DEVELOPMENT COMPANY LTD
SOUTH CHINA SEA
SULU SEA
CELEBES SEA
BRUNEI
SARAWAK
LAHAD DATU
13
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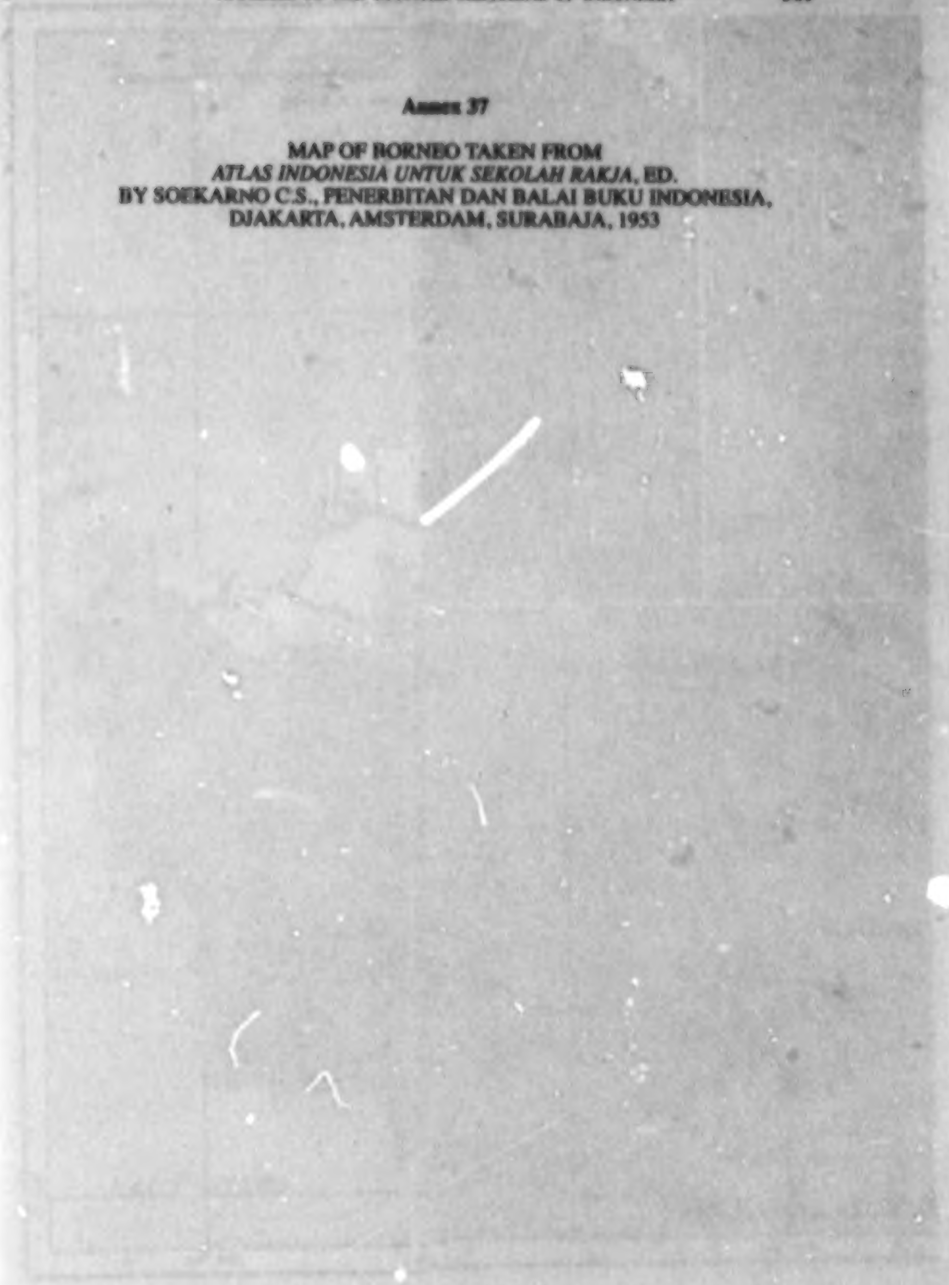
Annex 37

MAP OF BORNEO TAKEN FROM *ATLAS INDONESIA UNTUK SEKOLAH RAKJA*, ED. BY SOEKARNO C.S., PENERBITAN DAN BALAI BUKU INDONESIA, DJAKARTA, AMSTERDAM, SURABAJA, 1953



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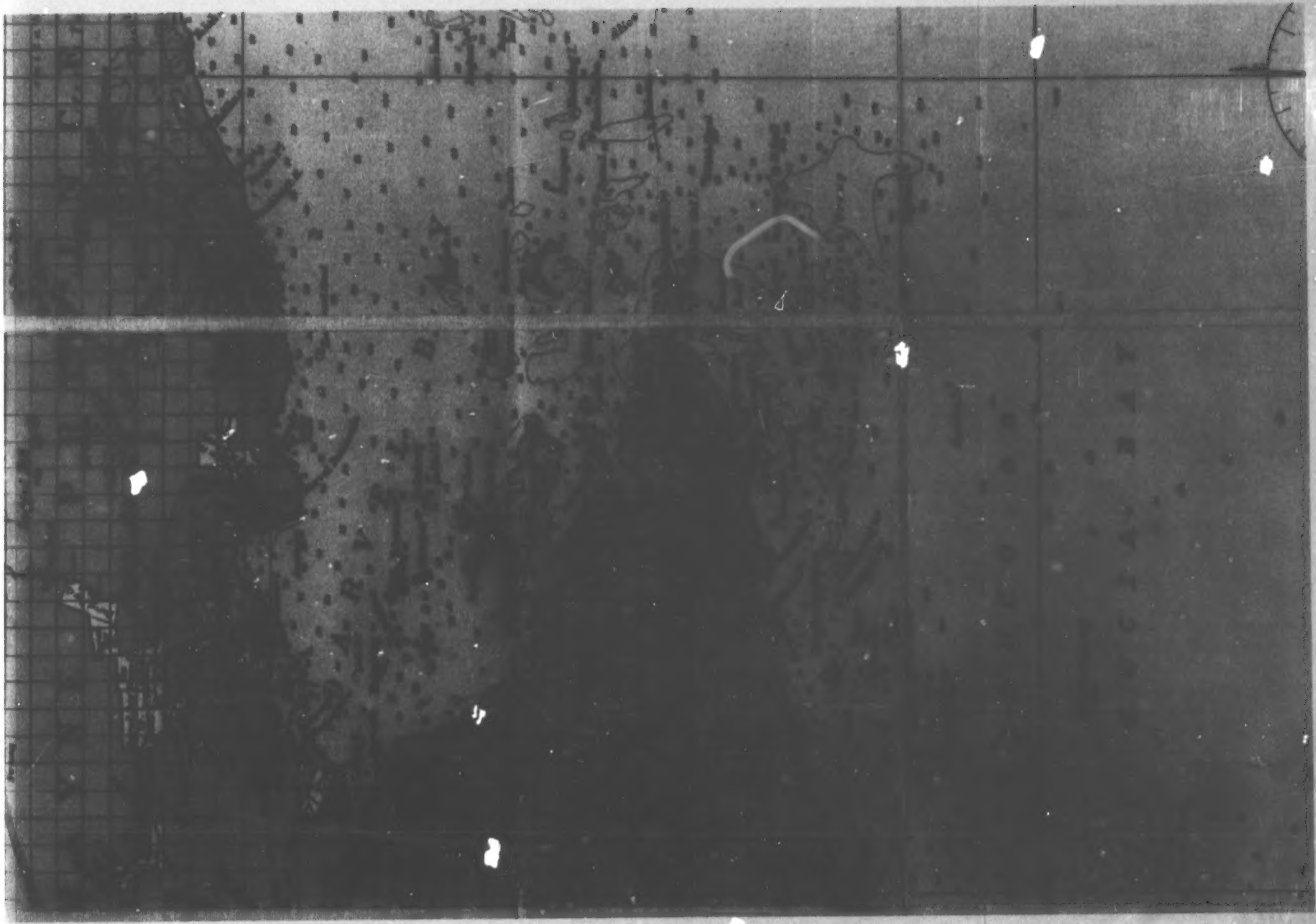
RAWA
LAUT DJAWA

PONTIANAK dan SEKITARNJA

Annex 38

ENLARGEMENT OF *MAP OF BRITISH NORTH BORNEO*, STANFORD, E., 1906



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électronique: publications@un.org

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